Dec. 15 - affd - Miller

979

SUPREME COURT OF THE UNITED STATES.

No. ~~163~~. 85. 39. 21. 20.

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CALVIN M. RUTHERFORD, APPELLANT,

vs.

JOHN AND ROBERT GEDDES & AL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

G. S. Gideon, Printer, 511 Ninth street, Washington.

981

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Mott & Fraser and R. Hunt,
Proctors for Libellant.
Filed April 12th, 1854.

Libel in Personam.

To the Honorable the District Court of the United States for Eastern District of Louisiana:

In admiralty sitting.

Calvin Morgan Rutherford, residing in New Orleans, exhibits his bill against John & Robert Geddes, Converse & Company, and John O. Woodruff & Co., and R. B. Sumner; and the said Rutherford doth allege and articulately propound:

First—That libellant was the owner of a certain steam propeller or vessel called the "Colonel Stanton," of the burthen of one hundred and fifty tons, or thereabouts; that at the time when the cause of action hereinafter set forth arose, she was registered and employed in the business of commerce and navigation between the ports of New Orleans and San Francisco, in the territory of the present State of California; that libellant was also owner of the entire cargo of said steam propeller

Secondly—That on the 22d day of January, 1850, at about 9 o'clock, P. M., the said steam propeller "Colonel Stanton" left the port of New Orleans on a voyage for San Francisco, with a full cargo of bacon, pork, provisions and sundries, all belonging to libellant; that said propeller was well and sufficiently manned and equipped, tight and staunch, and sailed for her intended voyage; that she was to touch at Rio Janeiro for coal, but she was to proceed to that port under sail, and that in order to descend the Mississippi river and proceed to sea, she was taken in tow by the steam tow-boat called the "Diana," which tow-boat took said propeller from the wharf at New Orleans and proceeded to tow her down the river towards the Gulf of Mexico.

Thirdly—That during said voyage down the river, and when near the mouth of the river, at or about the hour of 4 o'clock of the morning of the 23d inst. the steamship "Ohio" was described coming up the river, and the said steam tow-boat "Diana" was so negligently, improperly, carelessly and ignorantly managed, that a collision took place between the said tow-boat "Diana" and the propeller "Colonel Stanton," then in tow of the "Diana," and the steamship "Ohio," whereby the said "Diana" and the said propeller "Colonel Stanton" were struck, and the said propeller sunk in deep water with her entire cargo, which was totally lost to your libellant, and that, although some trifling articles have since been saved from the wreck, yet their value did not much more than suffice to pay the expenses of saving them.

Fourthly—That the value of the said propeller, "Colonel Stanton," was twenty-four thousand dollars; the value of the cargo on board, twelve thousand dollars, and the value of the freight for carrying said cargo to its place of destination was six thousand dollars, making a sum total of forty-two thousand dollars, all of which has been entirely lost to libellant, by reason of the collision aforesaid.

Fifthly—That by reason of the careless, negligent, improper and unskillful management of the said steam tow-boat "Diana," libellant is entitled to claim from the runners of said tow-boat, as damages, the whole amount of the loss suffered by him as aforesaid, amounting to said forty-two thousand dollars, with interest, at the rate of five per centum per annum from the 23d day of January, 1850, until paid.

Sixthly—That the said steam tow-boat "Diana" was owned by a commercial firm located and doing business in New Orleans, known as the Independent Tow-Boat Company, and which firm was engaged in the towage of vessels and transportation of passengers and freight, for hire, and various other purposes, and the members of said firm were and are liable in solido for all the debts, contracts and liabilities of said Company.

Seventhly—That libellant employed the said Tow-Boat Company to tow his said propeller down the Mississippi to the Gulf of Mexico for a valuable consideration to be paid to them, as is usual in all such cases, and the owners of the said "Diana" and the members of the said firm or Company are liable, in solido, to libellant for the losses aforesaid, experienced by him.

Eighthly—That among the members of the said firm and Company of the Independent Tow-Boat were and are the said John & Robert Geddes, Converse & Co., R. B. Sumner, and John O. Woodruff & Co.

Ninthly—That the said contract for the towage of the "Colonel Stanton" from the port of New Orleans to the Gulf of Mexico, and the said collision with the said steamship "Ohio" were made and occurred on the Mississippi river, where the tide ebbs and flows, and within the jurisdiction of this honorable court.

Tenthly—That all and singular, the premises are true.

Wherefore, libellant prays that the process of monition may issue to the Marshal of the Eastern District of Louisiana, commanding him to cite and admonish the said John & Robert

Geddes, Converse & Co., R. B. Sumner, John O. Woodruff & Co, to appear before this honorable Court on the day of and there to answer the libellant in the premises, according to the course of Courts of admiralty, and the rules and practice of this court, in civil causes of admiralty and maritime jurisdiction, and that this honorable court will pronounce for libellant's aforesaid demand against said John & Robert Geddes, Converse & Co., R. B. Sumner, John O. Woodruff & Co., in solido, and jointly and severally, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice appertain, and as the court is competent to give in the premises.

(Signed,) C. M. RUTHERFORD.

MOTT & FRASER AND R. HUNT,
Proctors.

C. M. Rutherford, libellant, sworn, deposes that the matters and allegations set forth in the foregoing libel are true.

Sworn to and subscribed at New Albany, this 12th day of April, 1854, before
(Signed,) ROBT. M. LUSHER,
U. S. C.

(Signed,)
C. M. RUTHERFORD.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

CHAS. M. RUTHERFORD,
vs.
JOHN & ROBERT GEDDES,
CONVERSE & CO.,
R. B. SUMNER, and
J. O. WOODRUFF & CO.

MONITION IN PERSONAM.

Filed April 14th, 1854.

The President of the United States, to the Marshal of the said District, or his lawful Deputy, greeting:

You are hereby strictly charged and commanded that you monish and cite peremptorily and personally, John & Robert Geddes, Converse & Co., R. B. Sumner, and John O. Woodruff & Co., of New Orleans, severally to appear before the said court, sitting in admiralty, on or before the third Monday from service hereof, to answer unto Charles M. Rutherford in the above cause, and further to do and receive in this behalf as to justice shall appertain, and that you duly certify the aforesaid court what you shall have done in the premises.

[SEAL.] Witness Hon. Theo. H. McCaleb, Judge of said court, at New Orleans, this 13th day of April, A. D., 1854.

(Signed,) ROBT. M. LUSHER, *Dy. Clk.*

MARSHAL'S RETURN.

Received, April 13th, 1854, with duplicates of this mo-
1 nition and copies of the libel in the within named case; on
the 13th April, 1854, I served copy of this monition and
of the libel on Mr. R. B. Sumner, by handing the same to said
R. B. Sumner in person, in New Orleans; on the 13th of
2 April, 1854, I served a copy of this monition and of the
libel, on Converse & Co., by handing the same to Mr. T.
3 M. Converse in person, in New Orleans; on the 14th day
of April, 1854, I served a copy of this monition and of the
libel on J. & R. Geddes, by handing the same to R. Geddes
in person, in New Orleans; on the 14th April, 1854, I
4 served a copy of this monition and of the libel on J. O.
Woodruff & Co., by handing the same to Mr. J. O. Wood-
ruff in person, in New Orleans, and returned this day, New Or-
leans, April 14th, 1854.

(Signed,) L. TRIGANT,
Deputy U. S. Marshal.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD
vs.
J. & R. GEDDES,
CONVERSE & CO.,
JNO. O. WOODRUFF & CO.,
R. B. SUMNER.

PLEA TO THE JURISDICTION.

Filed May 9th, 1854.—WOLFE & SINGLETON, *Proctors.*

Plea to the jurisdiction of this Honorable Court on behalf of J. & R. Geddes, herein represented by Robert Geddes, Converse & Co., herein represented by Wm. P. Converse, Jno. O. Woodruff & Co., herein represented by Jno. O. Woodruff, and R. B. Sumner.

The said J. & R. Geddes, Converse & Co., Jno. O. Woodruff and R. B. Sumner, by protestation, not confessing or acknowledging any of the matters and things in the libellant's petition and libel contained, to be true in such form and manner as the same are therein alleged. For their joint plea to the jurisdiction of this Honorable Court say,

1st. That these appearers are not members of the Commercial Firm located in New Orleans, and known as the Independent Tow-Boat Company, and that they are not bound, as members of said partnership in solido, for all the debts, contracts and liabilities of said partnership, as charged in the 6th article of said libel.

2d. That on or about 8th day of April, 1848, these appearers, together with a large number of other persons, residents of the City of New Orleans, appeared before Albert Chide Ainsworth, a duly commissioned Notary Public in and for the Parish and City of New Orleans, and availing themselves of the provisions of the act of the Legislature of the State of Louisiana, entitled, "An act to authorize limited or anonymous partnership, and to regulate the same," approved 13th March, 1837, did form and establish, under the provisions of said law, the limited partnership or company, styled and known as the Independent Tow-Boat Company.

3d. That both by the express provisions of the said law and of the Public Notarial act of association, the liability and responsibility of the members of the said Company for all losses, damages and contracts to any and all persons were limited to the amount of capital stock by them, or any of them held.

4th. That the enterprise of the said Company wholly failed, and the stock is now utterly valueless and worth nothing, and the said Company wholly insolvent.

That this Honorable Court, sitting as a Court of Admiralty, hath no jurisdiction to enquire into, and pass judgment upon, the legality and validity of the charter of the Independent Tow-Boat Company, created and established by virtue, and in pursuance of the laws of the State of Louisiana, nor enquire into, and pass judgment upon, the corporate rights, privileges and immunities of these appearers, members of said Company, depriving them of those rights, privileges and immunities.

Wherefore these appearers respectfully interpose this their plea to the jurisdiction of this Honorable Court, and ask its judgment as to whether they shall further answer the Libellant's petition and libel, and that they be dismissed hence with costs.

(Signed,) WOLFE & SINGLETON,
Proctors for Appearers.

R. B. Sumner, (May 9th, 1854,) Wm. P. Converse, (May 12th, 1854,) R. Geddes, (May 12th, 1854,) and John O. Woodruff, (May 19th, 1854,) personally appearing on oath, depose that the matters-of-fact herein set forth are true to the best of their understanding and belief.

(Signed,) R. B. Sumner,
" Wm. P. Converse,
" R. Geddes,
" John O. Woodruff.

Before

(Signed,) Robt. M. Lusher,
U. S. Court.

U. S. District Court, *Eastern District of Louisiana.*

May Term—1854. Stated Session.

Saturday, May 20th, 1854.

Court met at 10 o'clock, A. M. Present Hon. T. H. McCaleb.

In admiralty.

6935
C. M. Rutherford,
Owner of Propeller "Col. Stanton."
vs.
J. & R. Geddes and others of late Independent Tow Boat Co., owners of Tow Boat "Diana."

The Respondents' plea to the jurisdiction herein filed came regularly up for hearing to-day: Thos. R. Wolfe, Esq., appearing for said Respondents in support of the Plea, and A. A. Fraser for the Libellants, in opposition. The Respondents offered in evidence a copy of the act of partnership of the Independent Tow-Boat Company, which, after some discussion, was admitted by the Court, and after argument on both sides, at length, the Court took the plea under advisement.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and AL.:

Opinion on plea to the jurisdiction.

Rendered June 5th, 1854.

Hon. THEO. H. McCALEB.

I have considered the plea to the jurisdiction filed by the respondents in this case, and shall now proceed to give, very briefly, my opinion upon the various points presented to sustain it.

In the first place, it is quite unnecessary for me to determine at this stage of the case, whether the respondents are members of the commercial firm located in New Orleans, and known as the Independent Tow-Boat Company or not, nor whether they are bound as members of the partnership in solido for all the contracts and liabilities of the partnership, as charged in the 6th article of the libel. These are clearly questions of law, which must necessarily arise when we come to consider the merits of the controversy, after the parties have produced their evidence.

In the second place, let us suppose that the alleged limited partnership was formed in accordance with the provisions of the Act of Legislature as set forth in the plea of the respondents; does it follow that a tow-boat owned by such a company could not commit a *marine tort* by running foul of another vessel, when it is not doubted that the locality of that tort was fully within the jurisdiction of the admiralty? Or will it be seriously contended, that because the owners of this tow-boat constituted a limited partnership, she was perfectly at liberty to commit any wrong, however unjustifiable, or cause damage, however great, with impunity? It is well settled that, on the justance side of the admiralty, its jurisdiction is not in general founded on possession of the thing. It may exercise complete jurisdiction as to seamen's wages, as to marine torts, as to collisions, and perhaps as to salvage, without possession, and rest entirely on the process in personam. (The Bolina and cargo, 1 Gallison, 75.)

If the law under which the organization of this company took place was designed by the Legislature to confer upon it a right to derive all the profits it could from the enterprise in which it embarked, and at the same time to exempt it from liability for all debts it might contract, and all damages it might cause through its agents, beyond the amount for which its members, by the terms of their partnership, became responsible, then it was an Independent Tow-Boat Company indeed, and certainly enjoying privileges not usually granted to companies of a similar character engaged in towing vessels on the Mississippi. I do not now assume to decide upon the extent of the liability of either the company in its corporate capacity, or of individuals who composed it; but I know no reason whatever why this Court may not exercise jurisdiction for the purpose of ascertaining whether or not all the allegations of the libel are true. In deciding upon this question of jurisdiction, they must indeed be taken as true, and I have no hesitation in saying that they present a clear case for the exercise of the admiralty jurisdiction of this Court. They set forth a cause of damage arising from a collision, by which the libellant lost a valuable vessel and cargo. They show that this collision was caused by the negligence and want of skill of the officers who had charge of the tow-boat, employed for a valuable consideration to tow the vessel in question from the port of New Orleans to the Balize. They show that this tow-boat was owned by a commercial partnership or company, of which the respondents are members, and who, they allege, are responsible for the damages thus caused by the negligence and want of skill of those whom they employed.

The grounds taken in the plea to the jurisdiction may very properly become the subject of examination upon the merits, but they are insufficient to bar an enquiry into all the matters presented in the libel.

The plea to the jurisdiction must therefore be overruled, and the respondents ordered to answer over to the merit.

U. S. District Court, *Eastern District of Louisiana.*

Stated Sessions. 1854—May Term.

Monday, June 5th, 1854.

Court met at 10 o'clock, A. M. Present Theo. H. McCaleb.

In admiralty.

C. M. Rutherford, *vs.* J. & R. Geddes and others, (Part owners of tow-boat Diana.)	Judgment on Plea to Jurisdiction.

The Court having taken under advisement, and carefully considered, the plea herein submitted on the 20th ult., and being satisfied, for the reasons given in its opinion and judgment, rendered thereon in writing, that the grounds taken in the plea are insufficient to bar an inquiry into all the matters presented in libel.

It is now, therefore, adjudged and decreed, that the said Plea to the Jurisdiction be overruled, and it is ordered that the respondents answer over to the merits within the legal delay.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD, *vs.* J. & R. GEDDES and AL. } Answer of Respondents.

WOLFE & SINGLETON, *Proctors.*

Filed June 15th, 1854.

Now come John & Robert Geddes, Converse & Co., represented herein by Wm. P. Converse, John O. Woodruff & Co., represented herein by John O. Woodruff and R. B. Sumner, and reserving to themselves all manner of benefit and advantage of the plea and exception to the jurisdiction of this Honorable Court, heretofore made and filed, now appear and make this their answer to the libel of C. M. Rutherford, and for answer to the libel say:

First—That these respondents have no knowledge of the matters and things charged in the first article of said libel, and require proof thereof.

Second—These respondents have no knowledge of the matters and things alleged in the second articles of said libel; they therefore require proof thereof.

Third—These respondents have no sufficient knowledge or information of the averments in the third article of said libel that will enable them either to admit or deny the same under oath; they therefore require proof of the same.

Fourth—These respondents have no knowledge of the value of the propeller "Col. Stanton," nor of her cargo nor freight, and require proof of the correctness of the averments.

Fifth—These respondents deny that there was any carelessness, negligence, or improper or unskillful management of the said steam tow-boat "Diana," as charged in the fourth article of this libel.

Sixth—These respondents expressly deny that the tow-boat "Diana" was owned by a commercial firm located and doing business at New Orleans, known as the Independent Tow-Boat Company. They also deny that the members of any such firm are liable in solido for all the debts, contracts and liabilities of said Company; on the contrary, these respondents aver and charge that the steam tow-boat "Diana" was owned by an incorporated Company, established in conformity with the laws of the State of Louisiana, located in New Orleans, and known as the Independent Tow-Boat Company. That the stockholders of the said Company are not bound in solido for the debts, contracts and liabilities of the said Company. That the liabilities of the stockholders of the said Company for all loss, damage and obligations are expressly limited, both by the laws of Louisiana and by the charter of said Company, to the amount of capital stock held and owned by each one of them.

Seventh—These respondents have no knowledge of the matters and things charged in the seventh article of said libel, and require proof. They deny that the stockholders or members of the Independent Tow-Boat Company are liable in solido for any losses occasioned by the steam tow-boat "Diana."

Eighth—These respondents expressly deny that they are or ever were members of a commercial firm known and styled the Independent Tow-Boat Company. Your respondents further answering the 8th article of the libellant's bill of complaint, aver and shew, that they, together with a large number of other persons, residents of the city of New Orleans, availing themselves of the advantages and privileges of the act of the Legislature of the State of Louisiana, approved 13th day of March, 1837, and entitled, "An act to authorize limited or anonymous partnerships, and to regulate the same," appeared before Albert Childe Ainsworth, a duly commissioned Notary Public in and for the Parish and City of New Orleans, on the 8th day of April, 1848, and formed a limited partnership or Company, known as the Independent Tow-Boat Company. That both by the act aforesaid of the 13th March, 1837, and by the act of incorporation passed before the said Notary Public, the liability of the stockholders for all loss, damage or contracts of the said Company was expressly limited to the amount of capital stock owned by them respectively; that at the date at which it is said the said collision occurred, to wit: on the 23d day of January, 1850, your respondents were severally owners of the following shares, to wit: J. & R. Geddes, eighteen shares; Converse & Co., twenty shares; John O. Woodruff & Co., three shares; and R. B. Sumner, three shares; that the par value of the said shares was $1,000 per share, but at the times it is alleged the said collision occurred as aforesaid, the stock of the said Company was valueless, the enterprise having entirely failed and having become entirely insolvent.

Ninth—That all and singular, the premises are true.

Wherefore these respondents respectfully pray that the premises considered, your honor will be pleased to pronounce against the demand in the libellant's bill of complaint contained, and render such decree in favor of these respondents, as to justice and equity may seem just and right, and for costs.

(Signed,) **Wolfe & Singleton,**
Proctors for Respondents.

Before the undersigned Commissioner of the U.S. for the Eastern District of Louisiana,

Personally appeared

(June 19th, 1854,) **John Robert Geddes,**
by Robert Geddes.
" 22d, " **Converse & Co.,**
by Wm. R. Converse.
" " " **John O. Woodruff & Co.,**
by

(July 17th, 1854,) R. B. Sumner, severally respondents herein, who having been duly sworn, do depose and say, that the allegations set forth in this answer are true and correct, according to the best of their knowledge and belief.

Sworn to and subscribed the respective dates aforesaid, at New Orleans, before
(Signed,)
Robert M. Lusher,
U. S. Court.

(Signed,) **R. Geddes,**
" **W. P. Converse,**
" **R. B. Sumner.**

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes, et. als.

Amended and supplemental libel filed January 11th, 1855.

Mott & Fraser, *Proctors.*

To the Honorable the District Court of the United States for the Eastern District of Louisiana. In admiralty sitting:

Calvin M. Rutherford, residing in New Orleans, exhibits this his amended and supplemental libel, against Robert Murphy, McDowell & Peck, a commercial firm, composed of Robert McDowell & F. Peck, B. Saulet, Dominique Lanata, Bailey & Baxter, Thomas Diamond, Hughes, Valette & Thomas, a commercial firm composed of John Hughes, Francis Valette, and Thomas, whose full name is unknown to libellant, Madame De St. Romes, and Pierre Deverges, as well as against John & Robert Geddes, Converse & Co., R. B. Sumner, and John O. Woodruff & Co.

1st. That libellant filed his libel in this honorable Court against the said John and Robert Geddes, Converse & Co., R. B. Sumner and John O. Woodruff & Co., and they were duly admonished and cited to appear, and they did appear and answer thereto.

2d. That by the seventh article of said libel, libellant did allege and articulately performed, that among others, the said J. R. Geddes, Converse & Co., R. B. Sumner, and John O. Woodruff & Co., were members of a commercial firm known as the Independent Tow-Boat Company, and as such, were liable to libellant for the losses, &c., set forth in said libel.

3d. Now libellant doth articulately propound and allege that he has discovered that there were other and are other members of the said commercial firm of the Independent Tow-Boat, beyond the said parties so as aforesaid set forth in the said seventh article, and among them are the said Robert Murphy, McDowell & Peck, B. Saulet, Dominique Lanata, Bailey & Baxter, Thomas Diamond, Hughes, Valette & Thomas, Madame De St. Romes, and Pierre Deverges, and that the said parties are, as well as the said J. & R. Geddes, Converse & Co., R. B. Sumner, and John O. Woodruff & Co., liable in solido to libellant for the amount claimed in libellant's original libel.

4th. That libellant reiterates the same allegations as against these parties, as against the original parties to the original libel.

Wherefore libellant prays that the process of monition may issue to the Marshal of the Eastern District of Louisiana, commanding him to cite and admonish the said Robert Murphy, McDowell & Peck, B. Saulet, Dominique Lanata, Bailey & Baxter, Thomas Diamond, Hughes, Valette & Thomas, Madame De St. Romes, and Pierre Deverges, to appear before the honorable Court on the then and there to answer the libellant in the original libel and in the premises, according to the course of Courts of admiralty and the rules and practice of this Court in civil cases of admiralty and maritime jurisdiction, and that this honorable Court will pronounce for libellant aforesaid demand in his original libel contained against said J. & R. Geddes, Converse & Co., R. B. Sumner, John O. Woodruff & Co., Robert Murphy, McDowell & Peck, B. Saulet, Dominique Lanata, Bailey & Baxter, Thomas Diamond, Hughes, Valette & Thomas, Madame de St. Romes, and Pierre Deverges, in solido and jointly and severally, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice appertain, and as the Court is competent to give in the premises, and that libellant be permitted to file his amended and supplemental libel

(Signed,) Mott & Fraser, *Proctors.*

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes and other
Members of late
Independent Tow-Boat Co.

Monition to Robt. Murphy and others.

The President of the United States, to the Marshal of said Eastern District of Louisiana, or his lawful Deputy, greeting:

You are hereby commanded that you cite and admonish severally—

Robert Murphy,
McDowell & Peck,
B. Saulet,
Dominique Lanata,
Bailey & Baxter,
Thomas Diamond,
Hughes, Valette & Thomas,
Madame De St. Romes, and
Pierre Deverges,

to be and appear before the said Court within fourteen days from service on them respectively of the accompanying copies of the libel and supplemental libel of the libellant in the above entitled cause, then and there to file their answers to the said libel and supplemental libel, and to do and receive what the said Court shall then and there determine in that behalf.

And make due return herein of your doings in the premises.

By order of Court.

{ SEAL } Witness Honorable Theo. H. McCaleb, Judge of said Court at New Orleans, this 23d day of Jan'y, A. D. 1855, and 79th year of American independence.

(Signed,) Robt. M. Lusher,
Deputy Clerk.

MARSHAL'S RETURN.

Received January 23d, 1855, and on same day served copies of the within libel and copies of libel, and supplemental libel, and monitions on Messrs. Dominique Lanata, Mrs. De St. Romes, Pierre Deverges, personally, in the city of New Orleans, and on the 24th day of January served copy of the same on McDowell & Peck by handing the same to McDowell, of said firm of McDowell & Peck, personally, and on B. Saulet, by handing the same to Blanche Saulet, his daughter, a white person, apparently above the age of fourteen, at his domicil in the city of New Orleans, and on Thos. Diamond, served copy of same on Catharine Kelly, a white person, apparently above the age of fourteen years, at his domicil in the city of New Orleans, and also on Bailey & Baxter, by handing the same to H. V. Baxter, in person, in the city of New Orleans, and also on Robt. Murphy, personally, in the city of New Orleans, and on Hughes, Valette & Thomas, by handing the same to F. Valette, one of the firm of Hughes, Valette & Thomas, in person, in the city of New Orleans, and returned this writ into Court January 25th, 1855.

J. M. KENNEDY,
U. S. Marshal.

W. COSTAWJI,
Deputy Marshal.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

ANSWER OF THOS. DIAMOND.

LARUE & WHITAKER, *Proctors*—Filed Feb'y 9th, 1855.

To the Honorable, the District Court of the United States for the Eastern District of Louisiana:

In admiralty.

Now comes into Court Thomas Diamond, under the summons herein issued, in libel and amended, and supplemental libel, in this case filed, and reserving to himself all exceptions, as well to the jurisdiction of the Court as to the numerous errors in said libel contained, answers as follows:

To the first article of said libel he saith, that he knows nothing of the truth of the facts therein contained, but he denies that any or all of them are true, and requires strict proof thereof.

To the second article he saith, that he knows nothing of the facts alleged therein, but denies that any or all of them are true, and requires strict proof thereof.

To the third article he saith, that he knows nothing of the facts alleged therein, but denies that any or all of them are true, and requires strict proof thereof.

To the fourth article he saith, that he knows nothing of the facts therein contained, but denies that any or all of them are true, and requires strict proof thereof.

To the fifth article he saith, that he is in no wise liable to libellant in this case for any damages whatsoever, by reason of any of the allegations contained in the preceding articles, or in the said fifth article.

To the sixth article he saith, that he never was a member of any commercial firm known as the Independent Tow-Boat Company; that said Company was in no respects a commercial firm; that it was never formed for the purpose of carrying freight and passengers for hire, and he denies that the steam tow-boat "Diana" was ever employed for any such purpose, or that the members of the said Tow-Boat Company are liable *in solido* for the debts, contracts and liabilities thereof.

To the seventh article he saith, that of the employment of the tow-boat "Diana" by the libellant he knows nothing; but he denies that such employment ever took place as alleged, and denies further that he is liable to any damages said libellant may have sustained in consequence thereof.

To the eighth article he saith that he was a stockholder in the Independent Tow-Boat Company to the extent of eight shares of $1,000 each, that he has paid up the whole of said stock, and 30 per cent. additional on each share, and that he is in no wise indebted to said Company and in no wise liable to any additional contribution.

To the ninth article he saith, that of the towage of the "Colonel Stanton" and the collision alleged to have occurred, he knows nothing, but he denies all allegations therein contained and requires strict proof thereof.

To the tenth article he saith, that he doth utterly and totally deny the same.

Wherefore respondent prays that this, his answer, being considered, and other due proceedings had, he be hence dismissed with costs.

(Signed,) LARUE & WHITAKER.

Personally appeared Thomas Diamond, who being sworn, deposes and says that the facts herein set forth are true.

(Signed,) T. DIAMOND.

Sworn to and subscribed at New Orleans this 9th February, 1855, before

(Signed,) ROBERT M. LUSHER,
U. S. Court.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

ANSWER OF PIERRE DEVERGES.

LARUE & WHITAKER, *Proctors*—Filed February 9th, 1855.

To the Honorable the District Court of the United States for the Eastern District of Louisiana:

Now comes into court Pierre Deverges under the summon therein issued in libel amended and supplemental libel in this court filed, and reserving to himself all exceptions as well to the jurisdiction of the court as to the numerous errors in said libels contained answers as follows:

To the first article he says, that he knows nothing of the truth of the facts therein contained, but he denies that any or all of them are true, and requires strict proof thereof.

To the second article he saith, that he knows nothing of the truth of the facts alleged therein, but denies that any or all of them are true, and requires strict proof thereof.

To the third article he saith, that he knows nothing of the truth of the facts alleged therein contained, but denies that any or all of them are true, and requires strict proof thereof.

To the fourth article he saith, that he knows nothing of the facts therein contained, but denies that any or all of them are true, and requires strict proof thereof.

To the fifth article he saith, that he is in no wise liable to libellant in this case for any damages whatever by reason of the allegations contained in the preceding articles or in the said fifth article.

To the sixth article he saith, that he never was a member of any commercial firm known as the Independent Tow-Boat Company; that said Company was in no respects a commercial firm, that it was never formed for the purpose of carrying freight and passengers for hire, and he denies that the steam tow-boat "Diana" was ever employed for any such purpose, or that the members of the said Tow-Boat Company are liable, *in solido,* for debts, contracts and liabilities thereof.

To the seventh article he saith, that of the employment of the tow-boat "Diana" by the libellant, he knows nothing. But he denies that said employment ever took place, as alleged, and denies further, that he is liable to any damages said libellant may have sustained in consequence thereof.

To the eighth article he saith, that he was a stockholder in the Independent Tow-Boat to the extent of one thousand each, that he has paid up the whole of said stock and additional on each share, and that he is in no wise indebted to said Company, and in no wise liable to any additional contribution.

To the ninth article he saith, that of the towage of the "Col. Stanton," and the collision alleged to have occurred, he knows nothing, but he denies all the allegations therein contained, and requires strict proof thereof.

To the tenth article he saith, that he doth utterly and totally deny the same.

Wherefore respondent prays that this his answer being considered, and other due proceedings had, he be hence dismissed with costs.

(Signed,) LARUE & WHITAKER.

Personally appeared Pierre Deverges, who, being sworn, deposes and says that the facts herein set forth are true.

(Signed,) PIERRE DEVERGES.

Sworn to and subscribed before me, this 9th day of February, 1855. (Signed,) N. R. JENNINGS, *Clerk.*

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,

vs.

J. & R. GEDDES and ALS.

ANSWER OF MADAME J. C. DE ST. ROMES.

LARUE & WHITAKER, *Proctors*—Filed February 9th, 1855.

Now comes Pierre Deverges, herein representing Mdme. De St. Romes, as her agent and attorney in fact, under the summons therein issued in libel, and amended and supplemental libel in this court filed, and reserving to her all exceptions, as well to the jurisdiction of the court as to the numerous errors in said libels contained, answers as follows:

To the first article she saith, that she knows nothing of the facts therein alleged, but denies that any or all of them are true, and requires strict proof thereof.

To the second article she saith, that she knows nothing of the facts therein alleged, but denies that any or all of them are true, and requires strict proof thereof.

To the third article she saith, that she knows nothing of the truth of the facts alleged therein, but denies that any or all of them are true, and requires strict proof thereof.

To the fourth article she saith, that she knows nothing of the facts therein contained, but denies that any or all of them are true, and requires strict proof thereof.

To the fifth article she saith, that she is in no wise liable to libellant in this case for any damages whatsoever, by reason of any of the allegations contained in the preceding articles, or in the said fifth article.

To the sixth article she saith, that she never was a member of any commercial firm known as the Independent Tow-Boat Company; that said Company was in no respects a commercial firm; that it was never formed for the purpose of carrying freight and passengers for hire, and she denies that the steam tow-boat "Diana" was ever employed for any such purpose, or that the members of the said Tow-Boat Company are liable in solido for the debts, contracts and liabilities thereof.

To the seventh article she saith, that of the employment of the tow-boat "Diana," by the libellant, she knows nothing, but she denies that said employment ever took place, as alleged, and denies further, that she is liable to any damages said libellant may have sustained in consequence thereof.

To the eighth article she saith, that she was a stockholder in the Independent Tow-Boat Company to the extent of
of one thousand dollars each; that she had paid up the whole of said stock, and additional on each share, and that she is in no wise indebted to said Company, and in no wise liable to any additional contribution.

To the ninth article she saith, that the towage of the "Col. Stanton," and the collision alleged to have occurred, she knows nothing, but she denies all the allegations therein contained, and requires strict proof thereof.

To the tenth article she saith, that she doth utterly deny the same.

Wherefore respondent prays that this, her answer, being considered, and other due proceedings had, she be hence dismissed with costs.

(Signed,) LARUE & WHITAKER.

Personally appeared Pierre Deverges, hereinre presenting Madame J. Le De St. Romes, as her agent and attorney in fact, who, being sworn, deposes and says that the facts herein set forth are true, to the best of his knowledge and belief.

(Signed,) P. DEVERGES.

Sworn to and subscribed before me, this 9th day of Feb'y, 1855.

(Signed,) N. R. JENNINGS, *Clerk.*

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES.

EXCEPTIONS OF HUGHES VALETTE & THOMAS.

DURANT & HORNER, *Proctors*—Filed Feb'y 14th, 1855.

To the Honorable THEO. H. MCCALEB, Judge of the U. S. District Court for the Eastern District of Louisiana:

Now into this Honorable Court, by their Proctors, came John Hughes and Francis Valette, surviving partners of the firm of Hughes, Valette & Thomas, and Mrs. Josephine Thomas, surviving widow in community and natural tutrix of her minor children representing the deceased partner, Mark Thomas, of said firm, all domiciled in the parish of Orleans, and within the jurisdiction of this Honorable Court, and to the libel and supplemental libel of the aforesaid C. M. Rutherford, served upon them in this case, they except, and say that they were not, nor have they been at any time since 7th Feb'y, 1850, stockholders, or partners, or in any wise interested in the Independent Tow-Boat Company, as on the 7th Feb'y, 1850, they had sold and assigned and transferred to Robert Murphy, all the interest of every kind whatsoever which they ever had in said Company, for a good and valuable consideration; and that they had entirely ceased to have any interest, direct or indirect, in the Independent Tow-Boat Company, from and after the said 7th Feb'y, 1850.

And these respondents pray this Honorable Court, here, *in limine*, to sustain this, their exceptions, and to render judgment, dismissing them herein, with all their costs.

(Signed,) DURANT & HORNER.

Proctors for HUGHES,
VALETTE & THOMAS.

John Hughes, one of the parties herein appearing, makes oath that the matters of fact herein pleaded are true and correct.

Sworn to and subscribed at New Orleans, this 14th Feb., 1855, before

(Signed,) Robt. M. Lusher, *U. S. Court.* } (Signed,) John Hughes.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes, and als.

Exception of Robert Murphy, and al.

Benjamin Bradford & Finney, *Proctors*—Filed March 20th, 1858.

And now comes Robert Murphy, McDowell, and Peck, and Dominique Lanata, made defendants in the above entitled suit, and claiming and reserving all manner of benefit of the plea to the jurisdiction of this honorable court, made on the part of J. & R. Geddes and als., Co. defendant herein, now except to the libel, and to the supplemental libel of the said C. M. Rutherford, that it is not competent to the said libellant to have and maintain his action against these defendants, in the manner and form attempted herein, for this, viz:

That the Independent Tow-Boat Company to which the said steam tow-boat "Diana," is alleged to have belonged, was not a commercial firm, composed of these defendants and others, located and doing business in New Orleans, and the members thereof liable in solido for all the debts, contracts, and liabilities of the said Company, as averred in the said libel, and supplemental libel; but on the contrary, the said Independent Tow-Boat Company "was a limited or anonymous partnership, organized and established in said New Orleans, in conformity with the laws of Louisiana, and particularly with an act of the Legislature of Louisiana, approved on the 15th day of March, 1837, entitled, "an act to authorize limited or anonymous partnerships and to regulate the same," that the said Company was vested with all the rights and privileges of chartered Companies created by the laws of the State of Louisiana; that these defendants as partners and stockholders in said Company, have paid the full amount which they were bound to pay upon the stockhold, them and in virtue of the laws aforesaid, and of the special provisions of the act organizing the said Company, are not in any manner responsible for the debts and obligations of the said Company, nor for any loss, damage, or liability to any person beyond the amount of the stock, so held by them, and that it is not competent to the said libellant to proceed against these defendants individually, and as attempted herein, and in manner and form as set forth in his said libel and supplemental libel.

Wherefore these defendants, reserving their rights to answer fully and to the merits of the said action in the case, this their exception, be overruled, now pray that this exception be maintained, and that they be hence dismissed with costs.

(Signed,) BENJAMIN BRADFORD & FINNEY,
For Defendants.

February Term, 1855—Stated Sessions.

Saturday, March 31st, 1855.

Court met at 10 A. M.—Present, Hon. THEO. H. MCCALEB.

CALVIN M. RUTHERFORD,
vs.
J. & R. GEDDES & AL.
ROBERT MURPHY & AL.
of late Independent Tow-Boat Co.
In Chancery
On Exception.

The exception herein filed on behalf of Robert Murphy, McDowell & Peck, and Dominique Lanata, respondents, came regularly up for hearing, Edward A. Bradford, Esq., appearing for said respondents, and A. A. Frazer and Randell Hunt, Esqrs., for the libellants. E. A. Bradford and Randell Hunt, Esqrs., having respectfully adduced authorities on, and argued at length the point involved in the exception, the Court took the same under advisement.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES & ALS.

Act of Incorporation of Independent Tow-Boat Company,
April 8th, 1848.
Submitted with exception,
Filed March 31st, 1855.

Be it known that on this eighth day of April, in the year one thousand eight hundred and forty-eight:

Before me, Albert Childe Ainsworth, a Notary Public in and for the Parish and City of New Orleans, State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned,

Personally came and appeared, Robert Murphy, John Hughes, herein representing the firm at Hughes, Valette & Thomas, of Algers, in this Parish; Richard Bartlett Sumner, Robert McDowell, for the firm of McDowell & Peck; John O. Woodruff, for the firm of John O. Woodruff & Co.; B. Saulet, Manuel Elliott, for himself and Manuel Elliott & Co.; William C. Budd, by Robert Murphy; Alexander Miller, Dominique Lanata, C. J. Meeker, L. J. Webster, for the firm of L. J. Webster & Co.; John Geddes for the firm of J. & R. Geddes; E. Weysham, for the firm of E. Weysham & Bro.; W. M. Converse, for the firm of Converse & Co.; J. B. Bailey, for the firm of Bailey & Baxter; George Hinton, Joseph A. McFarland, Martin Davis, William M. Hamberry, William Long, Thomas Diamond; Madame de St. Romes, Paul Deverges, for himself and as her attorney; H. B. Quick, J. H. King, C. T. Beauvegard, and Alfred Robert.

And the said appearers declared that they desire to form an anonymous partnership under the act of the Legislature of the State of Louisiana, approved on the 13th day of March, 1837, entitled, "An Act to authorize limited or Anonymous Partnership, and to regulate the same."

And that, with this view, they do by these presents enter into the stipulation and agreements following. That is to say:

1st. The said co-partnership or Company shall be conducted under the name and title of the Independent Tow-Boat Company, and shall be located in the parish and city of New Orleans, State of Louisiana.

2d. The business and operations of said Company shall be the towing vessels by steam power in and out to sea, and up and down the river Mississippi, and the transporting passengers in like manner; also wrecking and lightering vessels in said river or at sea, or both carrying passengers and freight in any part of the Gulf of Mexico and elsewhere at sea, together with the purchasing and building of such steam vessels as may in any manner be required by or for the use of said Company.

3d. That the capital stock of the said Company is hereby at this time fixed at the sum of one hundred and twenty-five thousand dollars divided into shares of one thousand dollars each, with the privilege of hereafter increasing the said capital stock, if required by the stockholders owning a majority of the stock, to any amount not exceeding a total of three hundred thousand dollars.

The said amount of one hundred and twenty-five thousand dollars shall be paid in as follows, viz:

Twenty per cent. in cash upon the signing of the act, of the stock taken by any parties, and their respective balances, in installments, at not more than ten per cent., at such times as the Company may require said installments, to be assessed by the board of directors of the Company.

4th. The names of the several parties, and the amount which such party now contributes toward said capital stock, namely:

STOCKHOLDERS.	NO. OF SHARES.		AMOUNT.
Robert Murphy	Twenty	20	$20 000
R. B. Sumner	Ten	10	10 000
McDowell & Peck	Twenty	20	20 000
John O. Woodruff & Co.	Three	3	3 000
B. Saulet	Three	3	3 000
Manuel Elliott	One	1	1 000
W. C. Budd	One	1	1 000
Alex. Miller	One	1	1 000
Dominique Lanata	Two	2	2 000
C. J. Meeker	Five	5	5 000
L. J. Webster & Co.	One	1	1 000
J. & R. Geddes	Ten	10	10 000
E. Weysham & Bro.	One	1	1 000
Converse & Co.	Ten	10	10 000
Bailey & Baxter	Two	2	2 000
George Hinton	Two	2	2 000
Jos. A. McFarland	One	1	1 000
Martin Davis	One	1	1 000
Wm. M. Hamberry	Two	2	2 000
Wm. Long	Two	2	2 000
C. T. Beauvegard	Two	2	2 000
Manuel Elliott & Co.	One	1	1 000
Thos. Diamond	Five	5	5 000
Hughes, Valette & Thomas	Ten	10	10 000
Mad. de St. Romes	Four	4	4 000
P. Deverges	One	1	1 000
King & Quick	Two	2	2 000
Alfred Robert	Two	2	2 000
Total shares,		125	$125 000

5th. This company or limited partnership shall exist and continue for and during the term of eleven years, commencing on the 5th of April, 1848, and ending on the 4th of April, 1859.

6th. The affairs of said company shall be directed by a manager and a board of five directors, to be composed of the manager and four of the stockholders.

7th. Whereas, it is understood that by the execution of these presents, Robert Murphy, of the city of New Orleans, doth transfer unto said Independent Tow-Boat Company, all his right and interest in, to and under a certain contract by him entered into the sixth day of April, 1848, with James Montgomery and Samuel Ward, the which contract is deposited in my notarial records, being for the exclusive privilege of using "Montgomery's Patent Boiler" for the towing trade from the upper line of the city of Lafayette, and extending one hundred miles to sea, and in consideration therefor, the said Robert Murphy is, by this act, appointed sole manager of said Independent Tow-Boat Company during the term of partnership of said Company. His duties shall be to manage and transact all the business and affairs of said Company. He shall keep a commodious office for that purpose, and appoint a Secretary under him, whose salary and the salaries of all agents, runners and others he may employ in the transaction of the business aforesaid, as well as the rent, hire and expenses of said office, shall be at the sole charge and cost of the said Robert Murphy; for which and his services as manager aforesaid, he shall be entitled to and receive as full compensation, a commission of five per cent. from the gross earnings of the boats owned by the Company.

The said manager can only be removed for cause, (as hereafter expressed,) and by a vote of two-thirds of the stockholders.

8th. It shall be the duty of the manager to keep in bound books a correct record of all the proceedings, transactions, accounts, business and affairs of the said Company, as well as a full account of the receipts and disbursement thereof.

He shall, on the 30th December, 1848, exhibit to the stockholders an explicit and detailed statement of all the affairs and concerns of the Company, and on the first Monday of April, the first Monday of July, the first Monday of October, and the last Monday in December of each and every year thereafter, he shall exhibit a like statement.

At the time of each and every such exhibit, the nett profits of the Company (if any there be) shall be divided among the stockholders, or their duly authorized agents or legal representatives, in proportion to the number of shares by each stockholder respectively owned and possessed, for which dividend a receipt shall be taken in a book to be kept for that purpose.

9th. The following persons are hereby named as Directors of the Company, to act as such until the first of January, 1850, viz: Robert McDowell, John Geddes, John Hughes and John O. Woodruff.

10th. On the last Monday in December, 1849, and at a corresponding time in each and every year thereafter, a meeting will be called by the manager, (of the stockholders,) who will proceed to an election of four Directors to serve for the year ensuing, commencing on the first day of January in each year. Each stockholder shall be entitled to one vote for and upon each share of stock by him owned in said Company.

It shall be the duty of the said directors to meet at the office of the manager at such times as by the said Board may hereafter be agreed upon.

They shall take cognizance of the affairs of the Company; they shall decide upon the purchase of all boats, and also upon the building of all boats for the Company; they shall examine the statements of the manager, and thereupon, in their good judgment, declare dividends of profits upon the capital stock.

11th. In case of death, inability, resignation or removal for cause of the present manager, a meeting of the stockholders shall be called, and a majority of those present shall elect his successor.

Ten days' notice of such meeting shall be given in two newspapers published in the city of New Orleans.

At such meeting the stockholders shall decide his duties and powers, and the time for which he shall be appointed. Should it become necessary before a successor can be appointed by the stockholders, a manager pro-tempore may be appointed by the Board.

12th. The secretary mentioned in the 7th article of this act, shall be appointed in the manner following:

The manager may nominate three persons, one of whom shall be elected by the Board of Directors.

The secretary shall act as treasurer of this Company, and shall collect and receive all monies on its account, and immediately deposit the same in such bank as the directors may designate, thence to be drawn only on the checks of the secretary, countersigned by the manager, and for the purposes of said Company.

He shall also make all the disbursements of said Company under the approval of the manager.

The secretary shall furnish security for the faithful performance of his duties, in two sureties, for the satisfaction of the Board of Directors, in the sum of not exceeding $10,000, as may be designated by the Board.

13th. In case of the death or resignation of any of the directors, the Board shall elect his successors from the stockholders for the unexpired term of office for which the deceased shall have been elected.

14th. The manager, during his continuance in office, shall not sell, transfer nor pledge in any manner, any of the stock by him owned at the time of his appointment, without permission of the Board of Directors.

15th. The causes of removal of the said manager, Robert Murphy, as mentioned in the 7th section hereof shall be deemed to be only—

Proven dishonesty in the management of the affairs of the Company, or proven mental or physical incapacity to conduct the same.

But any manager, against whom a charge may be made by a director or stockholder, involving any one of said causes of removal, may be suspended from his official duties by the Directors during the investigation of the charges, which investigation shall be immediate and made and decided within sixty days, and said suspension shall cease whenever such charge made shall be proved to be unfounded, and in case any manager be suspended on frivolous charges, or from malicious motives, such persons making such charges, and the Directors voting for such suspension, may be made accountable therefor in damages to such manager in any court of law.

16th. None of the stockholders nor any of the successors as such, shall be responsible for any loss, damage or liability to any person, beyond the amount of capital stock by them or any one of them respectively held.

17th. Any stockholder, not paying up his installments within thirty days after the same shall have been assessed, shall be deemed to have forfeited his stock to the Company, together with all previous amounts paid thereon.

18th. The stockholders composing the Company shall have the right to purchase so many slaves as they may deem proper for the use and convenience of the Boats and the general business, and to sell or exchange the same and re-place them by others at their option.

19th. When the Company shall have arrived at the period at which, by this act said partnership will expire, all its affairs and concerns shall be wound up and liquidated to the best advantage of the Company (as they shall deem discreet) by three stockholders for that purpose chosen Commissioners at a meeting of the stockholders, regularly called, and a vote of compensation for their services and the time within which they shall wind up the affairs of the Company may be decided and declared.

20th. Such Commissioners so elected shall have power to collect, sue for, or compound or compromise all debts to the Company due, and to sell or dispose of for each at public auction, or otherwise all the books, slaves, property, chattels and effects of the Company, after which all monies over and above the liabilities of the Company, when the same are settled, shall be apportioned *pro rata* upon the shares owned by the stockholders.

Thus done and passed at my office in the city of New Orleans, in the presence of Wm. Shannon and Theophile Commagere, competent witnesses, who hereunto signed their names, together with all the said parties and me, the Notary, the day and the year first above written.

Original signed,

Hughes, Valette & Thomas,
by John Hughes.
R. B. Sumner,
B. Saulet,
for Mrs. F. Degruy.
J. A. McFarland,
Dominique Lanata,
H. B. Quick,
McDowell & Peck,
for R. McDowell.
J. H. King,
William M. Hamberry,
P. Deverges,
William C. Budd,
for Mrs. R. Murphy.
Madame de St. Romes,
for P. Deverges.
T. Diamond,
Alfred Roblot,
William Shannon,
Theo. Commagere,

Robert Murphy,
John Geddes,
for J. & R. Geddes.
L. Webster & Co.,
by L. Webster.
J. O. Woodruff & Co.,
J. O. Woodruff.
Alexander Miller,
George Hinton,
Converse & Co.,
for W. P. Converse.
Martin Davis,
C. J. Meeker,
William Long,
E. Weysham & Bro.,
by E. Weysham.
Manuel Elliott,
Manuel Elliott & Co.,
for Manuel Elliott.
Bailey & Baxter,
by J. B. Bailey.

A. C. Ainsworth,
Notary Public.

I certify the foregoing to be a true copy of the original act on file and record among the notarial records of A. C. Ainsworth, my predecessor.

{SEAL.} (Signed,) G. Rareshide,
Notary Public.

New Orleans, March 29th, 1855.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES, and ALS.

Decree on Exception,
Rendered and filed 9th April, 1856.

HON. THEO. H. MCCALEB.
U. S. Judge.

This is an action *in personam* in the admiralty, to recover from the respondents the sum of $42,000 damage, which the libellant alleges he has sustained in consequence of the loss of the propeller "Col. Stanton," her cargo and freight, by a collision with the steamship Ohio, on the night of the 23d of January, 1850. The propeller was, at the time of the collision, in tow of the tow-boat "Diana," then owned and employed by the respondents and their associates, as members of the Independent Tow-Boat Company, in the business of towing vessels by steam power in and out to sea, and up and down the river Mississippi. This Court, as well as the Circuit Court of this district, have already decided that the collision was the result of negligence and want of skill on the part of those who had charge of the "Diana."

The libel alleges that the steam tow-boat "Diana" was owned by a commercial firm located and doing business in New Orleans, and known as the Independent Tow-Boat Company, which firm was engaged "in the towing of vessels and the transportation of passengers and freight, for hire and various other purposes, and the members of the said firm were and are liable *in solido* for all the debts, contracts and liabilities of said Company."

It is further alleged that the libellant employed the said Tow-Boat Company to tow his said propeller down the Mississippi to the Gulf of Mexico, for a valuable compensation to be paid to them as is usual in all such cases, and the owners of the "Diana," and the members of the said firm or Company are liable *in solido* for the losses sustained by him.

The demand of the libellants is met by an exception to the effect, that the members of the Independent Tow-Boat Company are not *a commercial* firm, and therefore not responsible *in solido* for all the debts, contracts and liabilities of the Company, but that the said Company was *a limited or anonymous partnership* organized and established in this City, in conformity with the laws of Louisiana, and particularly, with an act of the Legislature of Louisiana, approved on the 13th of March, 1837, entitled, "an act to authorize *limited* or anonymous partnership and to regulate the same."

It is admitted that the defendants, as partners and stockholders in said Company, have paid the full amount which they were bound to pay upon the stock held by them respectively. And the 8th section of the act under which it is contended the Company was organized, provides "That no individual, partner or stockholder in any of the Companies or partnership contemplated herein, shall in any manner be liable over and above the amount of stock at *par value*, which they shall hold in any of the said Companies or partnerships for the debts and obligations of the same."

But it is contended by the Proctors of the libellant, that the members of this Company are not protected by the provisions of the act of the Legislature under which they were organized, because they engaged in a business which was not only not authorized, but expressly prohibited by that act.

Laws enacted for the establishment of particular Companies or partnership should be strictly construed, and those claiming special privileges or exemption under them should bring themselves clearly within their protective provisions.

The first section of the act of the Legislature relied on provides, "that from and after the promulgation of this act, it shall be lawful for any number of persons to join, and from among themselves and those who shall be willing to become subscribers thereto, any Company or partnership, for the purpose of carrying on *manufacturing, farming, or any other branch of industry, or making roads and canals, or of making insurance of any kind,* provided that no such Company shall be authorized to embrace at the same time more than one branch of business."

In the notarial act of partnership by which the defendants became associated, it is stipulated,

"That the business and operations of said Company shall be the towing vessels by steam power in and out to sea, and up and down the river Mississippi, *and the transporting freight and passengers in like manner.* Also wrecking and lightering vessels in said river or at sea, or both, *carrying passengers and freight in any part of the Gulf of Mexico and elsewhere at sea;* together with the purchasing and building of such steam vessels as may in any manner be required by, or for the use of the said Company."

If the business here specifically declared as that to which the resources and energies of the Company were to be directed, was authorized by the provisions of the first section to which reference has already been made, the authorization must be found in the words "*or any other branch of industry.*" Such general terms, if left unqualified, unexplained, or otherwise unaffected by any subsequent provisions of the act, might fairly be considered as sufficient to support the position assumed by the Proctors of the defendants. I deem it proper to remark, however, without being disposed to be too stringent in the application of terms, that such expressions as "branch of industry" "industrial arts," &c., taken in a popular sense, would seem rather to refer to agricultural and mechanical pursuits, than to those of commerce and navigation. I have little doubt that the language in question, taken in connection with the previous words of the law, were intended to refer to pursuits or avocations similar in character to those specifically designated. The view here taken will, I think, be confirmed by a reference to the provisions of 6th section, to which the argument was mainly directed. That section provides "that it shall not be lawful for any of the Companies or partnerships authorized by this act, to do any banking business of any kind, mercantile business of any kind, commission business of any kind, &c."

Now it is contended by the Proctor of the libellant, that the very business in which the Company was engaged, as shown by the terms of the notarial act by which the stockholders become associated, was of a mercantile or commercial character, that the Company itself having acted in violation of the prohibitory provisions of the law, can have no claim to the exemptions or privileges contained in that law, and must be regarded as a *commercial partnership.*

The Louisiana Code (art. 2795,) declares that partnerships are divided as to their object into commercial partnership and ordinary partnership. And art. 2796, declares that commercial partnerships, are such as are formed:

1st. For the purchase of personal property and the sale thereof, either in the same State or charged by manufacture.

2d. For buying and selling any personal property whatever as factors and brokers.

3d. For carrying personal property for hire in ships or other vessels.

Repeated decisions of the Supreme Court of this State clearly recognize the particular business mentioned in the 3d clause of the article here referred to, as commercial business, which renders the partners engaged in it liable, jointly and severally, as commercial partners. The mere joint ownership of vessels does not create a joint and several liability. But the moment the owners employ their vessels in the business of transporting personal property for hire, they hold themselves out to the world as parties engaged in a business which at once invests them with a character so far commercial as to render them responsible *in solido*, not only for their contracts, but for the *torts* committed by those in charge of their vessels while so employed. The learned proctor for the defendants has, I think, given much too restricted a signification to the word "mercantile," when he limits it to the mere business of buying and selling personal property. If the law, as understood in this State on this subject, is to be our guide, we certainly have no right to presume that the Legislature of Louisiana intended in the act relied on to include in the prohibition such business as we find specifically mentioned in the first and second clauses of the article 2796 of the Louisiana Code, and to exclude that mentioned with equal clearness in the third. We should rather presume that the lawgiver legislated with reference to the principles of our jurisprudence, as then understood and clearly defined by reported decisions of the appellate tribunal of the State.

It was clearly competent for the Legislature to authorize limited or anonymous partnerships for carrying on the business of transporting personal property for hire in ships or other vessels. It had the power to change or limit the responsibility of partners engaging in such business. It had the power, in other words, to alter the general law on this subject, as then well understood. And we find that it has authorized limited or anonymous partnerships for the purpose of carrying on manufactures; but in so doing, it has expressly restrained them from engaging in mercantile business of any kind. And it would seem clear, that if they should disregard this prohibition, the members of the partnerships would no longer be protected by the provisions of the act limiting their liability to the amount of their stock.

They would, on the contrary, as to all contracts of a mercantile nature, be regarded as commercial partners. If the business of buying and selling personal property was business of a mercantile nature at the time the act of the Legislature was passed, so also was the business of transporting personal property for hire on ships or other vessels; for they were both regarded equally as such in the Louisiana Code. By what authority, then, can we decide that the term as used in the act shall be applied to the former and not to the latter, when we are told that the partnerships, or Companies organized under that act, shall not engage in mercantile business of any kind?

A full consideration of the subject has led me to the conclusion that the Independent Tow-Boat Company was engaged in a business not authorized by the act of the Legislature creating limited or anonymous partnerships. It was, on the contrary, a business strictly of a mercantile nature, and as such, expressly forbidden by the act. The members of the Company are therefore not protected by these provisions of the act, which limit their responsibility to the amount of their stock.

The exception must therefore be overruled.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

Stated Sessions. February Term.

Monday, April 9th, 1855.

Court met at 10 A. M. Present, Hon. T. H. MCCALEB.

6935. C. M. RUTHERFORD, *vs.* J. & R. GEDDES and others, and ROBT. MURPHY and others.

Decree on Exception.

The Court having taken under advisement, and carefully considered the exceptions filed and agreed herein on behalf of Robert Murphy and others, and being satisfied, for the reasons given in writing, that the Independent Tow-Boat Company, of which the respondents were stockholders, was engaged, when the cause of action herein arose, in business of a mercantile nature, and that its members are not therefore protected from liability in this cause by the provisions of the act of the Legislature of Louisiana of 13th March, 1837, entitled an "Act to authorize limited or anonymous partnerships, and to regulate the same."

It is now ordered and decreed, that said exceptions be overruled, and that the respondents answer over to the merits within ten days.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

ANSWER OF ROBERT MURPHY and ALS.

BENJAMIN BRADFORD & FINNEY, *Proctors*—Filed May 10th, 1855.

Now come Robert Murphy, Dominique Lanata, and McDowell and Peck, made defendants herein, and saving and reserving to themselves all matter of benefit and advantage of the pleas and exceptions heretofore filed herein, now for answer to the libel and the supplemental libel of said C. M. Rutherford, libellant, adopt as their own the answer of their co-defendants, J. & R. Geddes and others, already filed herein, and pray that the same be taken as the joint and several answer of these defendants in the premises, and that they may be hence dismissed with their costs, and for general aid and relief.

(Signed,) BENJAMIN BRADFORD & FINNEY,
For defendants.

We consent that the foregoing answer be filed, affidavit being waived.

(Signed,) MOTT & FRASER,
For libellant.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

Stated Sessions, 1855—November Term.

Tuesday, December 4th, 1855.

At 10 A. M., Court met. Present, Hon. T. H. MCCALEB.

C. M. RUHERFORD,
6935. *vs.*
HUGHES, VALETTE & THOMAS, of late
Independent Tow-Boat Company.

The respondents' exception herein was argued by T. J. Durant, Esq., for said respondents, and A. A. Fraser, Esq., for the libellant, when the Court overruled the same, and ordered that these respondents answer to the merits within ten days.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD and AL.,
vs.
J. & R. GEDDES and AL.

ANSWER AND DEFENCE OF HUGHES, VALETTE & THOMAS.

DURANT & HORNER, *Attorneys*—Filed December 14th, 1855.

Now come into this Court John Hughes and Francis Valette, surviving members of the special partnership of Hughes, Valette & Thomas, made defendants herein, and reserving to themselves the benefit and advantage of the various pleas to the jurisdiction of this honorable Court, heretofore filed, and made and now reiterated, now appear and make this their answer to the libel of C. M. Rutherford, and for answer to the said libel, say:

1st. That these respondents have no knowledge of the matters and things charged in the first article of the said libel, and require strict proof thereof.

2d. These respondents have no knowledge of the matters and things charged in the second article of said libel, and require strict proof thereof.

3d. These respondents have no sufficient knowledge or information of the averments in the third article of the said libel, that will enable them either to admit or deny the same under oath, they therefore require strict proof of the same.

4th. These respondents have no knowledge of the value of the propeller, "Col. Stanton," nor of her cargo nor freight, and require strict proof of the correctness of these averments.

5th. These respondents deny that there was any carelessness, negligence or improper or unskillful management of the said steamboat "Diana," as charged in the fourth article of his libel.

6th. These respondents expressly deny that the steam tow-boat "Diana" was owned by a commercial firm located and doing business in New Orleans, known as the Independent Tow-Boat Company. They also deny that the members of any such firm are liable in solido for all the debts, contracts and liabilities of said Company. On the contrary, these respondents aver and charge that the steam tow-boat "Diana" was owned by an incorporate Company, established in conformity with the laws of Louisiana, located in New Orleans, and known as the Independent Tow-Boat Company.

That the stockholders of the said Company are not bound in solido, or in any other way, individually, for the debts, contracts, and liabilities of the said Company, for all loss, damage and obligation is expressly limited both by the laws of the State of Louisiana and by the charter of the said Company, to the amount of capital stock held and owned by each one of them.

7th. These respondents have no knowledge of the matters and things charged in the 7th article of said libel, and require proof. They deny that the stockholders or members of the Independent Tow-Boat Company are liable in solido, or in any other way individually, for any losses occasioned by the steam tow-boat "Diana."

8th. These respondents expressly deny that they are or ever were members of a "commercial firm or partnership" known and styled the Independent Tow-Boat Company. Your respondents further answering to the 8th article of the libellant's bill of complaint aver and show, that they, together with a large number of other persons, residents of the city of New Orleans, availing themselves of the advantage and privileges of the act of the Legislature of the State of Louisiana, approved 13th March, 1837, and entitled, "an act to authorize limited or anonymous partnerships and to regulate the same," appeared before A. C. Ainsworth, a duly commissioned Notary Public in and for the city and parish of New Orleans, on 8th April, 1848, and formed a limited partnership or Company known as the Independent Tow-Boat Company. That both by the act aforesaid of 13th March, 1837, and by the act of incorporation passed before the said Notary the liability of the stockholders for all loss or damage on contracts or other matters of said Company was expressly limited to the amount of capital stock owned by them respectively. That at the date at which it is said the collision occurred, to wit, on the 23d January, 1850, Hughes, Valette & Thomas were owners of the following shares, to wit: 12 shares of $1,000 each, but at the time it is alleged the said collision occurred as aforesaid, the stock of the said Company was valueless, the enterprise having entirely failed, and the Company became entirely insolvent.

9th. That all and singular, the premises are true.

Wherefore these respondents respectfully pray that the premises considered, your honor will be pleased to pronounce against the demand in the libellant's bill of complaint contained, and render such decree in favor of respondents as to justice and equity may seem right and for costs.

(Signed,) DURANT & HORNER,
Proctors for Respondents.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES & ALS.

Rule to read testimony.

Filed January 25th, 1856—to be heard on 2d February, 1856.

On motion of Mott & Fraser, *proctors for libellant*, it is ordered by the Court that respondents show cause on Saturday, the 2d day of February, 1856, at 10 o'clock, A. M., why the testimony taken in the cases of C. M. Rutherford *vs.* steamship "Ohio," No. 6651 of the docket of this Court, and in the case of the Independent Tow-Boat Company *vs.* steamship "Ohio," and No.

6652, and the testimony taken in said cases on appeal to the Circuit Court, Nos. 2072 and 2074 of the docket of said Court should not be read in evidence on the trial of this cause.

Service accepted.

(Signed,)
B. Bradford & Finney,
for the parties represented by them
(Signed,)
Wolfe & Singleton,
for Converse & Co., et al.

(Signed,)
Durant & Horner,
for James Hughes.
(Signed,)
Larue & Whitaker,
Diamond & St. Romes.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

November Term, 1855–6. Stated Sessions.

Saturday, February 2d, 1856.

Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

6935. C. M. Rutherford, *vs.* J. & R. Geddes & als. } The rule herein filed on the 25th ult. for the reading in this cause of depositions, &c., heretofore offered in suits 6651 and 6652 of this Court, and suits 2072 and 2074 of the Circuit Court, (growing out of the same cause of action,) came regularly up for a hearing to-day, and was argued by A. A. Fraser, Esq., for the libellant, in support thereof, and Thos. J. Durant, Esq., on behalf of the respondents, in opposition thereto, and was taken under consideration.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

November Term. Stated Sessions.

Wednesday, February 13th, 1856.

Court met at 10 o'clock, A. M. Present Hon. Theo. H. McCaleb.

6935. C. M. Rutherford, *vs.* J. & R. Geddes & als. } Order as to evidence.

The Court having considered the rule herein submitted on the 2d inst., relative to the admissibility in this cause of certain documentary evidence of record in the cases of the libellant and the Independent Tow-Boat Company respectively *vs.* the steamship "Ohio," Nos. 6651 and 52 of the docket of this Court, and on appeal, Nos. 2072 and 2074 of that of the Circuit Court for this district, growing out of the same cause of action.

It is now ordered that the parties be allowed to offer said evidence on the trial of the present cause, subject to all such legal exceptions as may be taken thereto on the hearing.

November Term, '56, 1857—Stated Sessions.
Monday, January 19th, 1857.

Court met at 10 A. M.—Present, Hon. T. H. McCaleb.

In admiralty.

Calvin M. Rutherford,
owner of steam propeller
"Col. Stanton," and cargo,
6935. *vs.*
J. & R. Geddes and others
of "Independent Tow-Boat Co.
owner of tow-boat "Diana."

Loss by collision, between the tow-boat "Diana" towing the "Stanton," and the steamship "Ohio" on the "Mississippi" River, near its mouth, 23d January, 1850.

Hearing and Order of Reference.

This cause came regularly up for hearing on the issues set forth in the libel and the amended and supplemental libel, and the answers of J. & R. Geddes, and others, Robert Murphy, and others, Hughes, Valette & Thomas, Thomas Diamond, Mdm. J. C. de St. Romes, and Pierre Deverges, of record.

Robert Mott, Esq., appeared for the libellant, and F. H. Clack, and John Finney, Esq., for the respondents.

The pleadings having been read, the following evidence, on file, was offered:

For Libellant.

1st. The deposition of J. F. Schenck, Master of steamship "Ohio" (taken July 5, 1854.) 2d. That of David Kinney, River Pilot, or same (taken April 16, 1856,) with the deposition of the same witness, taken 28th March, 1850, in case of C. M. Rutherford *vs.* steamship "Ohio" No. 6651, of the Docket, and identified by him.

The libellant further offered in evidence the following depositions, taken in said cause, and No. 6652 of the Docket. The Court reserving respondents' exceptions to the admissibility of the same, on the grounds, that the respondents herein were not made parties to the suit between libellants Rutherford, and the steamship "Ohio," (No. 6651,) that the libellant herein was not a party to the suit between the Independent Tow-Boat Company and the steamship "Ohio," (No. 6652,) that the issues presented in said causes, 6651 and 6652, are not identical with the present issue, and the parties are not the same—*res interalios acta.* 3d.

The depositions of Lieut. W. Mitchell, Robt. Wilson, Henry Shaver, Geo. T. Smith, and Wm. Scott. 4th. That of Moses Ezekiel. 5th. That of Wm. Chapman, and W. A. Hyde. 6th. Those of W. Mitchell, H. R. Davenport, and James F. Schenck, (taken April, 1851.) 7th. That of J. O. Whittemore. 8th. Those of E. B. Curtis, P. A. Hoves, and G. S. West, all taken in evidence for steamship "Ohio," in 6651 and 6652.

The libellant further offered in evidence (as proof of the damages sustained by him,) the testimony recently taken before U. S. Commissioner, R. M. Lusher, Esq., after due notices to the respondents, namely: Deposition of Samuel B. Convey, taken in California, and Peter Marcy; of J. S. Clark, and A. Capdeville, [export wardens,] with certificate annexed; of R. L. Robertson, with certificate, and O. A. Pitfield; and of J. M. Keyes; Those of Daniel Cobb, John H. Owen, and R. M. Haines; of James H. Dudley; of John S. Walton; of R. B. Sykes; those of Fredk. H. Knapp; of Geo. W. Hynson; of Wm. J. Dewey; and of D. B. Mosby; also "Coasting Manifest" of Col. Stanton, January 21st, 1850.

The libellant further offered, subject to respondents' exceptions, the deposition of George B. Colridge, and those of Alex. Miller, and Henry C. Hopper, on the allegations in the 6th article of the libel, together with the act of incorporation of the Independent Tow-Boat Company, produced by respondents, filed herein, March 31st, 1855.

For respondents.

The respondents, not waiving, but insisting on their exceptions to the libellant's testimony, reserved by the Court, and the libellant also now reserving his exceptions, offered in evidence the libel of C. M. Rutherford, *vs.* the steamship "Ohio,"—No. 6651, with the depositions of Wm. B. Moore, and Thomas McGinniss, and those of G. M. Bowditch, Peter Curran, Jackson McFarland, John M. May, and Joseph H. Conkling,—all taken in evidence for libellants, in 6651 and 6652.

And the cause having thereupon been submitted without argument, and the Court being satisfied, as it has heretofore adjudged in cases 6651 and 6652, that the collision complained of by the libellant was caused by the fault and improper management of the tow-boat "Diana," and that the libellant is entitled to reparation in the present cause.

It is now ordered and adjudged that the case be referred to Robert M. Lusher, Esq., the Admirality Commissioner, to ascertain and assess the damages sustained and recoverable by the libellant, and that his report be filed in Court, and duly notified to all parties interested in the final decree herein.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes and als.
(As owners of tow-boat "Diana.")

Evidence for Libellant.

Deposition of Captain J. F. Schenck, taken at New Orleans the 5th day of July, 1854, in presence of

Proctors, { A. A. Fraser, for Libellant, and
Thomas R. Wolfe, for Respondents.

Before and certified by U. S. Commissioner, George Washington Lewis.

Offered and read in evidence for libellant, and filed 19th January, 1857.

J. Findley Schenck, who, being duly sworn, doth depose and say, that my name is James Findley Schenck; my age forty-seven years; my occupation that of seaman on a merchant steamer. I have been a seaman for thirty years. I was at the time of September, 1849, up to some time in the latter years of 1852, in command of the steamship "Ohio."

I was in command of the "Ohio" at the time of the collision between her and the steamer "Diana" and "Col. Stanton." Captain Kinney was in charge of the "Ohio" at that time as pilot. All our steamships are in the habit of taking a river pilot at the Balize on each trip to this port. Capt. Kinney was taken on the "Ohio" on the trip in question at the pilot station after we crossed the bar.

I have no recollection of Capt. Kinney having any defect in his eyes at that time. I have still retained Capt. Kinney as pilot. The Company have still retained Capt. Kinney as pilot on their boats at a salary of $1,500 a year. Capt. Kinney's experience is very great. He has been on the river a great many years; was highly recommended; had been in command of a tow-boat, and is, besides, a seaman by profession. The only fault I ever had with Capt. Kinney was his extreme caution. I have no recollection of ever having ascended the river in the "Ohio" with any other pilot but Kinney.

On this occasion we found ourselves short of coal, and ascertained that a deposit of coal was made at the mouth of the river, and that we could there obtain the quantity required. We went to this depot, about half a mile above the pilot station, on the opposite side of the river. We were detained there until 3 or 3½ o'clock in the morning before we got away from the coal depot. After leaving the coal yard, we crossed the river in a diagonal line to the eastern shore, and soon after I left the deck in charge of the pilot, who always has charge of the ship coming up the river with the usual watch. Some ten minutes after, before I turned into my berth, I heard the collision. I heard Capt. Kinney sing out. I ran on deck and found the ship in contact with these two vessels, which afterwards proved to be the "Diana" and "Col. Stanton." My first object was to get clear of the steamboat, for fear she would set us on fire. The steamboat was alongside me and the bark across my bows, and the "Ohio" was backing when I got up on deck. Most of the persons rescued from the bark came on board the "Ohio," and also the captain and most of the crew of the steamboat. I think the captain of the bark went to the pilot station. The usual course of the "Ohio," in coming up the south-west pass, was on the eastern shore. This is the course invariably taken, and on this occasion she was in her proper place. I recollect that immediately upon the captain of the tow-boat coming on the "Ohio," I heard Capt. Kinney upbraid him for coming in our way. The captain said that he thought we were one of the Texas boats, which did not know where they were.

I had no idea at the time that there was any question as to who was in fault. There is a bend at this point, as shown by a diagram in Court, which no doubt led the steamboat to suppose that the "Ohio" was on the opposite side of the river. The "Ohio," I suppose, at the time, was too close into the shore, closer than she would have been under other circumstances.

When I got on deck I should not suppose that we were more than half the length of the "Ohio" from the eastern shore. I came on deck in my drawers, and staid there until long after daybreak, and I think until after sunrise.

Capt. Kinney, the first thing he said when I came on deck, called my attention to the position of the "Ohio," and remarked, "You see, captain, I am all right—I am in my right place." I had not been absent from deck at that time more than ten minutes.

Mr. Mitchell, second officer of the "Ohio," was the officer on deck in charge of the same. He is passed midshipman, and has since that time been in command of a vessel.

There were the usual lights on the "Ohio," which are carried under the act of Congress, by sea steamers; there were three lights at the time, of different colors—one on each wheel-house and one amidship; the one amidship was hoisted at the forward chimney or smoke-staff, and about 50 feet above the surface of the water; the other lights carried on the wheel-house were some 28 or 30 feet above the surface of the water; the colors were red, green and white, the red and green lights on the wheel-houses, and the white light amidship; these are the lights prescribed by the navy department. These lights were burning at the time on the "Ohio."

I heard no charge or intimation on the part of any person on board the vessels, that the "Ohio" was at all to be blamed for the collision; there seemed to be a tacit admission on the part of every one, that the "Ohio" was right, and in her right position; at the time Captain Kinney upbraided Captain Steele, of the tow-boat, for getting in his way, Captain Steele said that he had mistaken us for a boat lying at the wood yard on the west bank of the river, or for a Texas boat coming up without any pilot, not knowing where they were.

Ques.—Was any thing said by any of the crew of the "Diana" with regard to a difference of opinions between Captain Steele and the pilot of the "Diana" as to the position of the "Ohio?"

Ans.—There was a man brought on board with the rest of the crew, taken from the "Diana," who stated that he was at the wheel of the "Diana" at the time of the accident, and got his hand hurt there, and that there was a dispute between the captain and pilot of the "Diana" as to our position, whether we were on the east or west side of the river; we tried to procure the attendance of this man on the previous trial of this cause, but could never find him.

To the foregoing question and answer, Mr. T. R. Wolfe objects on the grounds, first, that it is not the best evidence, and secondly, that it is hearsay.

Witness states, from his knowledge of the facts, no blame whatever can attach to the officers of the "Ohio" for this collision.

Mr. Mitchell, who was in charge of the deck at the time, is now on the U. S. vessel "Bainbridge," on the Brazil station. Mr. Davenport was first officer on the "Ohio," and is now on the U. S. steamer Princeton.

I recollect the map which was made of the river at the point of collision on the former suit, 6651. I think it is correct or nearly so.

I think the marks on the map representing the collision, are correct as to distance of the vessels from the shore, but as the "Ohio" had her helm hard aport, I think she must have been heading more towards the shore than this is represented on the map. I only speak of the collision from my impression immediately after I came on deck; I did not see it.

From the time I went below until I came on deck again, it was impossible for the "Ohio" to have crossed and re-crossed the river. She was on the eastern shore when I went below; I mean by eastern shore, the right hand shore coming up.

A log-book was kept on the "Ohio," under my supervision, and therein were entered all the important events such as are usually written on vessels in such books; said book was kept by the first officer, Mr. Davenport.

Cross-examined by T. R. Wolfe, Esq.

I did not see the "Diana" before I retired from the deck; did not see her until after the boats came in collision. My attention was first attracted to the collision from hearing Captain Kinney sing out, giving some order to back, or something of the sort. The collision was so slight that I did not think there was any serious damages; I did not see the bark sink; we were embarrassed getting clear of the steamboat.

The first order which I recollect hearing Captain Kinney give was to back her. I was then below in my state-room preparing to turn in, and was partly undressed. I proceeded immediately on deck with the least possible delay.

(Signed,) JAS. FINDLEY SCHENCK.

(Signed,) G. W. LEWIS,
United States Court.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Evidence for Libellant.

Deposition of DAVID KINNEY,
Taken at New Orleans on 16th day of April, 1856, in presence of
A. A. FRASER, ESQ., for Libellant, and
Proctors, DURANT & HORNER, Esqs., and
R. W. GURLEY representing BENJAMIN
BRADFORD & FINNEY for Respondents.

Before and certified by the U. S. Commissioner, N. R. Jennings.

Offered and read in evidence for libellant, the 19th day of January, 1857.

David Kinney being duly sworn, deposes:

That he is about 55 years of age last December, by occupation a pilot, states that he was examined as a witness in the case of The Tow-Boat Company *vs.* the steamship "Ohio," and Rutherford *vs.* the steamship "Ohio," Nos. 6651 and 6652.

The transactions of the collision testified to by me in the examination in these causes were much more fresh in my memory then than now. That testimony has been read over to me to-day, and I now affirm what I therein stated, and make it a part of my present answer.

Witness can add nothing to what is therein contained, and he refers to said testimony as containing every thing he knows concerning the matters upon which he is interrogated. The said testimony, as taken, is now referred to and marked A, and is now annexed and made part of it.

Hughes, Valette & Co., represented by Durant & Horner, and R. W. Gurley, Esq., appearing for Bradford & Finney, proctors for respondents, reserve to themselves all exceptions in this testimony as taken by them upon the previous examination of the witness.

(Signed,) D. KINNEY.

(A)

Deposition of David Kinney for Respondents.

Taken and certified on the 28th March, 1850, by U. S. Commissioner, Charles A. Kellogg, in presence of Messrs. Murphy, Bradford and Micon, for libellants, proctors. Messrs. Finney & Simonds for respondents.

David Kinney being duly sworn, deposes:—I was on the steamship "Ohio" at the time of the collision between her and the "Colonel Stanton" and "Diana" in the capacity of river pilot. The collision occurred, to the best of my knowledge, about 4 or 5 miles above the pilot station. I am not certain of the distance, but know the exact place. The collision occurred on the east bank of the river, within 30 yards of the bank. I came on board of the "Ohio" the evening previous to the collision at about 8 o'clock; I got on the "Ohio" in the south-west pass, opposite the pilot station. We then crossed over to a coal yard on the opposite side of the river. The coal yard is about 400 or 500 yards above the pilot station. We left the coal yard the next morning about 4 o'clock, or a few minutes after 4, and should think we had run 30 or 35 minutes before the collision. I did not look at the clock after leaving the coal yard. I hauled over gradually to the east bank of the river, saw a vessel laying there near the east bank. I then steaded my helm until I passed her; I then hauled her into the east bank, kept in close to shore until I got up to what is called English Bayou—what we call close is within 50 or 60 yards of shore when there is nothing in sight. After passing English Bayou there is a little flat which persons accustomed to navigation usually avoid.

To the best of my judgment this flat is longer than the river is wide there—I should think in coming up around that flat I generally keep 80 yards large that from the east bank. On this occasion I was at about that distance. When I was about midway of this flat I saw a light in the middle of the river, I should think, which I took to be a tow-boat. When I first saw the light it was ¾ of a mile or more distant. I think it must have been that distance, for it gave me time to get past the flat up to the bold shore before the collision occurred. When I saw the light I was about midway of the flat, and I hauled the "Ohio" into shore, so that I got her within about 30 yards of shore, above the head of the flat, when the collision occurred. In doing so I gave several orders, certainly 2 or 3 to port the helm. After we had got 75 or 100 yards above the flat the collision occurred. At the time of collision she was running nearly straight with the bark, but when the collision occurred the engines of the "Ohio" were stopped and orders had been given to back her. The light above alluded to that I saw, was the light of the tow-boat "Diana." When I first saw the light, I should think the "Diana" was in about the middle of the river. Very soon after I saw the light, I perceived the tow was drawing towards the eastern shore, and just before the collision I saw she was drawing in towards the eastern shore very fast and nearly square in.

I am river pilot; have been master of tow-boats. I commenced the business in 1822 on the first tow-boat, and am now about the oldest man in the business. Have been away some time, but since 1829 or 1830 I have been constantly in the trade between New Orleans and the Balize. I have been most of the time engaged either as master or pilot on tow-boats. Am now 50 years old. Consider myself acquainted with the navigation of the river from New Orleans to the Balize and Gulf. I think this collision occurred on the morning of the 23d January last about 30 minutes past 4 o'clock in the morning. The wind was about E. or East Southerly at the time, moderate breeze. In coming up the river, in that part, with a wind any where between N. E. and S. E., pilots are in the habit of running the east bank. The reason why we always keep to the east bank is, that when the wind is east the wind is apt to blow the current over towards the west shore; the water is more regular on the windward shore and easier for an ascending boat. When I gave the order to port the helm, some one remarked, one of the steersmen, I believed, "that we would be into the bank." I replied, "never mind, let her go, or something to that purpose." When I got near enough to see that the vessel was on the larboard side of the tow, I thought, from the way she was heading, that he must be backing. I then gave the order to "slow her," but found that the tow neared me. I immediately ordered to stop and back her. The great way the tow-boat had, and he not stopping his engines, the collision took place in a few seconds after I gave the order to "back her." The reason I thought she was backing was, that I did not think she would have presented her own broadside to the ship, when she could have prevented it by backing; and I should have thought he would rather have presented the vessel in tow rather than the tow-boat itself—that all tow-boat men are usually taught to do so, to keep the tow-boat clear. The "Ohio" made about two or three revolutions back before the collision. One cannot tell very well the number of revolutions on a low-pressure boat, not so well as on a high pressure, where one can hear the escape of the steam. At the time of collision, the tow-boat was heading nearly across the river headings, towards the east bank. The stern of the "Ohio" came in contact with the starboard bow of the tow-boat "Diana," abaft her bits.

The stern of the "Ohio" cut off the bow of the tow, and came in contact with the propeller aft of the fore chains. The chimneys of the tow-boat fell across the "Ohio's" larboard bow. At the time of the collision, the stern of the tow was nearer the eastern bank than the stern of the "Ohio;" so little nearer as to make very little difference. Descending boats, seeing any object, should not keep far from the middle of the river, but rather on the west bank in that place. I am acquainted with Captain Steele, the captain of the "Diana." He came on the "Ohio" a very short time after the collision. I had a conversation with him relative to the collision on that occasion. I asked him, "In the name of God, Steele, what were you trying to do?" He said, "I took you to be a boat wooding over to the wood-yard." "Then," said he, "I thought you were a low-pressure boat coming up." "Well," says I, "we are a low-pressure boat." "Well," says he, "I mean one of those Galveston boats." Said I, "You could see that we were in our place." "Why," says he, "you are in the middle of the river, Kinney." "Come over," said I; "look at your bark, right alongside the bank." "Well," he said, "it is no time to talk about this now." He said, "What light is that?" Said I, "That is South Point." He said, "What light is that?" I told him that was the South-west Pass. "Why I thought you were head down steam," he says. That is about all the conversation that took place on the subject. We talked about other things. We had backed between the collision and the time of this conversation. We had backed a little off or outward. The wood-yard is abreast of the Flat spoken of on the west shore. There is no wood-yard at all on the eastern shore. At the time this conversation took place, we were but a very short distance from the place of collision. They came aboard in a very short time after. At the time of conversation, we were a little further from the eastern shore than at the time of collision. The tow-boat never stopped her engines, to my knowledge. As I sung out "slow," I heard a revolution of the tow-boat. I do not recollect hearing or noticing any farther about her steam, as the time was so short.

Cross-examined.

I should think the river in that part is a scant quarter of a mile wide. The night was clear enough to see both shores plainly. Just below the place of collision, on the west bank of the river, there is a shanty, sometimes called an oyster house. It was a very short time after the collision, cannot tell how many minutes, before the people from the "Diana" got on to the "Ohio." I was standing, as we were going up the river before the collision, on the "booby hatch," which is a very large hatch on the "Ohio," and about two-thirds of the way from the steering-wheel to the bow or stern. I suppose I was about as far from the stern as this room is wide. The hatch on which I stood was elevated, which enabled me to have a better view than I would have had if standing on deck. The hatch was higher from the deck than an ordinary sitting chair; not so high as an ordinary writing table, I should think. The bulwarks of the "Ohio" are not high—not so high as the hatch on which I stood; it is nearly a flush deck. The deck of the "Ohio" is considerably high above the water, in consequence of her large size. Being asked if the deck of the "Ohio" is not higher out of water than the pilot-house on the ordinary tow-boats? answers, I cannot say, as I never took particular notice. Being asked, "Whether a man accustomed to pilot the tow-boats would not be liable to be deceived when on the "Ohio's" deck with regard to position, distance or direction of a boat approaching?" answers, I think he ought not to be. With regard to distance, no man can be certain at any time; but he could certainly see how the boat was heading. It was immediately upon Capt. Steel's coming on deck that I had this conversation with him. I cannot say how far we had got from the bark when this occurred. It was a short distance—I should think not one hundred yards. Cannot tell about how long it was after the collision that this conversation occurred. Before this conversation with Capt. Steele, and almost immediately after the collision,

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several gentlemen came up around me, and I called their attention to the place of the "Ohio." I told them to look on the starboard bank, to see how close we were. The starboard bank is the east bank of the river. I showed them our position in order to show them that we were in our right place. I was not acquainted with them.

Ques.—"You have said that you gave orders two or three times to port the helm after you saw the tow-boat; were your orders obeyed?"

Ans.—"She sheered in rather slow, which was the cause of my repeating my orders." Steersmen are not apt to give more than a spoke or two when ordered to port her starboard, and their not coming in faster was the reason of repeating the orders so often. The "Ohio" did not run against the bank at all. I went on board the ship, the night preceding the collision, about 8 o'clock. She was then in the middle of the Pass, abreast of the pilot station. She then crossed over to the coal-yard, where she remained until near 4 o'clock in the morning. During the time we were laying at the coal-yard, I was asleep. The Captain aroused me in the morning. I did not, before I went to bed at night, or when I was aroused in the morning, make any objection to proceeding before daylight. Being asked, "Who was on deck of the 'Ohio' just before or at the time of the collision?" answers, "Just about the time of collision, or immediately after, I saw one of the gentlemen in uniform, whom I took to be an officer. When I went forward to go to the 'booby hatch,' I saw two of them talking. This was soon after starting. There were two quarter-masters in the wheel-house at the time.

After I went forward on the "booby hatch," I did not notice any one near me. They were all abaft of me—several people between me and the wheel-house. I was paying attention to my business, and did not look around to see who was on deck. When I first saw the lights of the tow-boat, I took her to be about the middle of the river. Some three or four or five minutes before the collision, I saw she was drawing across the river towards the east shore. Being asked, "Why did you not immediately stop your engines the moment you saw the tow-boat was drawing to the same bank of the river that you were running?"

Ans.—"I did when I was positive of it. We were then very close together." Being asked before that, "If you did not have an impression that she was nearing you?" says: "I had an impression she was nearing, for coming down stream, I knew she must be nearing me. I knew that I was in the right place. I expected she would pass clear of us until I saw her broadside, then I stopped my engines." Being asked "whether he did not perceive she was nearing the eastern shore before he saw her broadside," answers: "I saw she was nearing me, and as her broadside came around, I ordered to stop and back her. From the time I gave the order to back her until the collision occurred, it could not have been half a minute. There could not have been time for more than three or four revolutions." Being asked "how wide the flats are to which we have alluded," answers: "We usually keep out sixty or seventy yards in order to avoid the flat, and I have known boats to go farther than that. I should think the collision occurred one hundred yards or more above the flat." I think the speed of the "Ohio" before the collision was about seven and a half or eight miles by the land—seven miles any way, judging the distance she had made from the time she had started. When I gave orders to port the helm, the orders were always answered. I went down expressly for the "Ohio." I went down on the "Falcon," and expected to return either on the "Falcon" or the "Ohio;" never expressed to any person any doubt or objection about my piloting one or the other; never expressed to any person at the Balize an objection to my bringing up either of the boats on account of my eyes. My right eye was injured when about eighteen years of age; often joke with people about my game eye, but my eyesight was as good as it has ever been since. I have been on the Mississippi river. Was about midway of the flats when I first saw the tow-boat approaching. These orders to port the helm were given as we approached the head of the flats, in order to work her in towards the starboard shore. My first order to port the helm was given before we had quite reached the head of the flats, and where the flats grow nearer; cannot say how long time it was from the time I first saw the tow until the collision. It was but a very short time from the time I first saw her till I distinguished her broadside as being towards me. Cannot say how far off she was when I was first able to distinguish the broadside of the tow-boat as being towards me. The collision took place immediately; after that, I am unable to say. There is a slight bend in the river at the place of collision. The collision occurred just a little above the elbow.

(Signed,) D. KINNEY.

Sworn to and subscribed at New Orleans, District aforesaid, this 28th day of March, 1850, before me.

(Signed,) CHAS. A. KELLOGG, [SEAL.]
U. S. Commissioner, E. Dist. of La.

N. B.—The libellants reserve their exceptions to the *conversations* related by the witness in the foregoing deposition.

(Signed,) CHAS. A. KELLOGG,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

EVIDENCE FOR LIBELLANT.

Depositions of

Lieut. W. MITCHELL,
ROBERT WILSON, HENRY SHAVER,
GEO. F. SMITH, WM. SCOTT.

(*For claimants of steamer "Ohio" in* 6651 *and* 2.)

Taken and certified on the 28th day of February, 1850, by Chas. A. Kellogg, U. S. Commissioner, in presence of

Proctors, { BENJAMIN BRADFORD & MURPHY, Esqs., For Libellants.
FINNEY & SIMONDS, Esqs., for Respondents.

Offered in evidence for libellant, Rutherford.

JANUARY 19TH, 1857.

W. MITCHELL, being duly sworn, deposes:

I am twenty-six years of age, and am passed midshipman in the United States navy, and second officer on board the steamship "Ohio." I was on board the Ohio and was on the deck at the time of her collision with the tow-boat "Diana," and the propeller "Col. Stanton," on the morning of the 23d January last. I was on board in the same capacity I now occupy, and had charge of the deck at the time. The collision occurred about 20 minutes past 4, A. M. The "Ohio" was running on the east side of the river at the time of the collision, but whether she had been running on the east side before, I do not know, as my watch commenced at 4 o'clock. At the time of the collision she was not more than 30 or 40 yards from the bank. The wind was from between north-east and south-east at the time; there was a light breeze at the time. The "Ohio," at the time I came on deck, was making her course straight up the eastern bank of the river. I had just come up from below, on deck, on the forward companion-way on the starboard side, where I was standing at the time of the collision. I saw the steamboat just a moment before she struck, but from the height of the "Ohio" I could not see the manner in which the boats struck. I did not notice the direction from which the steamboat came, but from the way her chimneys fell on the deck of the "Ohio," she must have struck upon her starboard bow, for her chimneys fell upon the larboard side of the "Ohio." From the manner in which the chimneys fell, I consider that the tow-boat might have been edging in from the river towards the shore to get upon the inside of the "Ohio," and I cannot conceive how the chimneys could have fallen as they did, unless accounted for in this way. I heard, three or four hours after the collision, from the steersman of the tow-boat, who was on board the "Ohio," that his helm was hard to the starboard at the time of the collision. [This last is objected to by the proctors for the libellant, as not evidence.]

At the time I came on deck I noticed the tow-boat, or the light which I supposed to be the tow-boat, ahead of us, from twelve to fifteen minutes before the collision. I came on deck to relieve about ten minutes after 4 o'clock, and then saw the tow-boat, after which I went below, and returned on deck, as before said, just before the collision. I heard the orders given previous to the collision on board the "Ohio," to slow, stop, and back her. These were three distinct orders, necessarily, as you cannot stop her until you slow her, and cannot back her until you stop her. These orders were given by the pilot, Mr. Kinney. The one to back her was passed by me, myself, from the pilot. I heard these orders as I was coming up the companion-way. The steersman of the "Diana" came up to the city on board of the "Ohio" after the collision.

Cross-examined.

My watch commenced at 4 o'clock; I did not relieve the previous watch until ten minutes after 4. I went below for the purpose of ascertaining whether the chain was ready for running, so as to let go the anchor. I went below immediately after relieving the previous watch. I merely relieved the previous watch and went immediately below, and was but a very short time on deck. When I returned on deck I had only reached the head of the companion-way, on deck, when the collision occurred. The proper station of the officer on deck is near the pilot house, where he can see the compass. I had not yet reached that position before the collision took place. I do not know at what point of the river the collision occurred. I am not at all familiar with the navigation of the Mississippi river. I never came up the river but on the "Ohio," except once 12 or 13 years ago in a merchant vessel. It was the duty of the pilot who had charge of the vessel to navigate her while coming up the river. No officers besides myself were on deck at the time of the collision. I did not notice, when I first came on deck, in what part of the river the "Ohio" was. When I first came on deck I did not notice in what direction the "Ohio" was running. When I came on deck the second time, I had no opportunity to notice the position or direction of the boat before the collision took place. I had been below about eight or ten minutes. When I came on deck the second time it was impossible for me to see, on account of the height of the deck of the "Ohio," in what position the tow-boat was, and in what direction she was running. It was after the collision took place, and when my attention was called to it by the pilot, that I first noticed the position of the "Ohio" in the river.

Re-examination.

I cannot state how long after the collision it was that the pilot called my attention to the position, but it was before any steps had been taken to disengage the boats; it was immediately. There was time for the "Ohio" to have changed her direction, but there was not time for her to have changed position with regard to the banks. The mere force of the collision might have changed her direction. The "Ohio" had changed her sea pilot and had taken on board, at the bar, a regular river pilot. At the pilot station the sea pilot was discharged, and a regular river pilot, Mr. Kinney, was taken on board about 7 or 8 o'clock the evening previous to the collision. The whole control and navigation of the vessel belonged to the river pilot. I do not know the speed at which the "Ohio" was running at the time of the collision. Do not know the name of the steersman of the "Diana," before alluded to. The usual speed of the "Ohio" is about 11 miles in smooth water, but could not have been so great in the Mississippi, where the current was running 2 or 3 knots an hour.

(Signed,) W. MITCHELL, Passed Midshipman,
United States Navy.

Sworn to and subscribed at New Orleans,
District aforesaid, this 25th day of
February, A. D., 1850, before me.

(Signed,) CHARLES A. KELLOGG,
United States Commissioner.

ROBERT WILSON, being duly sworn, deposes:

My age is about 30; my residence is in New York city; I was quarter-master or steersman on board the "Ohio." At the time of the collision on the 23d of January, I was in the wheelhouse, at the bell; another person being at the wheel—the other quarter-master was at the wheel. There were two steersmen on watch at the time. The "Ohio" was on the eastern shore at the time of the collision—that is, on the right hand side of the river coming up. I should judge she was between 35 and 40 yards from the bank, as nigh as she could possibly go with safety, as she requires more room than a small boat. I should judge the wind was from the eastward. I am not certain, but am quite positive. I took my station at the wheel-house at about 10 minutes after 4 o'clock. When I first saw the tow, so as to distinguish her, she was about 2½ miles off, at that time; the pilot spoke and said a tow was coming down. After we got around a flat (the name which I do not know,) the pilot saw the tow coming, and ordered the man at the wheel to put the helm aport, to work her into the bank; he said, let us keep her into the eastern shore, and then we will be all right, for that is our proper place. This order was given, I should judge, somewhere about 10 minutes before the collision. The helm was put aport as ordered, and not only once but several times, so much so that at times I thought he would have her into the bank. The order was given several times, and it was done in obedience to the orders. I remarked, Capt. Kinney, you will have her on the bank; he said, "It does not make any difference, we must keep in our right place." The bank of the river along where the collision occurred, is a low marshy bank. When the boats got within a quarter of a mile of each other, Captain Kinney remarked, that they would be into us; also he remarked, "In the name of God, what are they trying to do." The descending boat was then in about the middle of the river. Captain Kinney also remarked, that "they were going to cross our bow to go inside of us." Captain Kinney then gave orders to stop her. I was on the larboard side of the wheel, and my partner was on the starboard side of the wheel; my partner pulled the stopping bell; Captain Kinney then remarked, "she will be into us, back her." I then pulled the bell on the starboard side to back her. I should judge the wheel had made four or five revolutions back. I can tell when she is backing by the motion of the boat, but cannot tell the number of revolutions from where I was in the wheel-house. I should judge the vessel was backing at the time of the collision—had sternway on her. I cannot say positively which boat came in contact with the "Ohio" first, but think that the "Ohio" struck rather in between boats. I think she struck the tow-boat on the larboard bow. I could not well from where I was, but judge this is the way she struck from the manner in which the boats parted after the collision, and the bark's running in towards the eastern bank, and the tow-boat on the opposite side of the "Ohio." No person on the "Ohio" could tell how they struck unless he were on the bows, as the "Ohio" was much higher.

The chimneys of the "Ohio" fell on the larboard bow of the "Ohio." The steersman of the "Diana" came aboard the "Ohio" at the time we picked the people off the wreck, and he came to the city on her. I heard no conversation between the steersman of the "Diana" and Captain Kinney, but I myself had a conversation with the steersman of the "Diana" on board the "Ohio," on the same morning with the collision, about 10 o'clock, A. M., as near as I could judge. I remarked to him, "What were you trying to do?" said he, "I was trying to cross your bow to go inside of you, thinking that you were on the western shore." Said I, "How did you have your wheel?" He replied, "Starboard." Then I remarked, "Where was the pilot?" He said, "He ran from the wheel." I then asked him, "Why did you not follow him?" He said, "I had not a chance before the boats came together." Captain Steele, of the "Diana," came aboard about the same time, I suppose, that the others did. Capt. Kinney was then on the forward deck. Captain Steele remarked, "Captain Kinney, where are you?" "On the eastern shore," Captain Kinney replied, calling to the passengers to take notice. Captain Steele then remarked to Captain Kinney, "Where are we?" Captain Kinney replied, "Don't you know there is the South Point Light, and we are on the eastern shore." Captain Steele then remarked, "When I first saw you, I took you to be a low pressure boat on the west shore wooding." Captain Kinney said, "My God, can't you see where we are, on the eastern shore." Captain Steele appeared confused and makes the remark, "that there is no use to talk any more about it now, as he was in a hurry to get with his men down to the Balize." Captain Steele asked Captain Kinney, "What lights those were?"—pointing to certain lights. Captain Kinney replied, "Don't you know? those are the South Point Lights."

Cross-examined.

Capt. Kinney was the pilot on the "Ohio," who came aboard at the pass on the evening before the collision. Our reason for being down the river so far was, that the "Ohio" was short of coal, and had stopped during the night at a coal yard on the western shore, and taken in, I should think, about twenty tons. I cannot tell at what time in the morning she left the coal yard, as I was not on watch at the time she left. When I came up on deck, Mr. Mitchell was on deck as officer of the deck. When I first saw the other boat, I should judge we were making about nine miles by the land. When Capt. Kinney made the remark, "She will be into us," the tow-boat was about a quarter of a mile off, and was in the middle of the river. The reason why this remark was made was, that the tow-boat was angling to get the inside of the "Ohio," as I suppose. When I saw the tow-boat first, I should think she was about two miles and a half off. The tow-boat was coming down the river. At the distance of two and a half miles off, she had not begun to go across the bows of the "Ohio." I should judge that when she did begin to cross our bows, and commenced angling across the river, the tow-boat was about a mile and a quarter off, judging from my position. It was not quite daylight. It was not moonlight—no clouds. I was able to see the tow-boat at the distance of a mile and a quarter, that she changed her course and began to angle across the river. I kept my eye fixed on the tow-boat from the time she was a mile and a quarter off, and began to angle across the river until the boats struck. Previous to striking us, I should judge, at a distance of half a mile, the tow-boat changed her course and angled still more towards the eastern shore. I do not think that from that half mile out, the tow-boat altered her course, except that so far as the current affected her, it brought her angling or nearly square across the bow of the "Ohio." From my position in the wheel-house, for I could not see as well as a person on the forecastle, I should judge that if the "Ohio" struck the "Col. Stanton," she struck her on the starboard side of the "Col. Stanton." My reason for thinking that she struck between the two vessels is, that one boat went on one side of the "Ohio," towards the eastern shore, and the other boat went on the other side of the "Ohio." When the collision occurred, I remained in my position at the wheel-house. We were backing at the time of the collision, and at the time, also, to get clear of these two vessels; we still continued backing, until we got about one hundred yards, and it may be less from the wreck. The people on the steamboat began to cry out, "We are sinking; come alongside and take us off." Some on the "Ohio" made the remark to go ahead, and others to back her. There was such an excitement at the time on board the "Ohio," that the pilot, Capt. Kinney, did not think it proper to go ahead for fear of running the wreck down. Finally he gave orders to work her ahead slowly for fear of running over them. The steamboat was then down to the hurricane deck in water. After we had gone ahead far enough to get alongside of the wreck, we stopped her to take the people off, in which we succeeded.

After we got the people on board, we wished to know if we were going to hold on and wait for daylight to pick the rest of the people up. The captain of the ship then remarked, "I have not coal enough to wait till daylight, but we will take those off the "Stanton," and then go up and pick up those we may find along the bank." By this time it was daylight. We then proceeded up the river along the eastern shore, to see if the bark wanted any assistance. Finally, after proceeding up the river a short distance, we fell in with something that had the appearance of a wreck, but the people on board did not think that that was the wreck until we came up alongside. It then proved to be the wreck of the "Col. Stanton." The captain then gave orders to lower away on it. By this time we came as close to the wreck as was convenient without running the ship afoul. Saw no one on the wreck. The captain then thought it prudent to hoist up the boat and proceed up along the bank, and pick the people up as we went along, if there were any. After proceeding up the river a short time, we fell in with a boat full of people. The captain then gave orders to the pilot to stop her. After the ship was stopped, he gave orders to the first officers to lower away the boat to take the people aboard. After getting the people on board, we started again to go ahead. We then saw no more after proceeding a short distance up, until we came abreast of a fisherman's hut, when we heard some one hailing the ship, we stopped her. The captain then gave orders to the first officer to hail the people, to know what they wanted. He finally came to understand that these people wanted to come on board the ship. Finally, the captain gave orders to lower away the boat. While lowering away the boat, a skiff put out towards the ship with two or three persons in it. The captain then gave orders to hold on. After getting these people on board, we proceeded on to get to town. After getting under way, they hailed again on shore. The pilot then remarked to the captain that if we stop and wait for these people, we will not have coal enough to take us to the city, but they would be provided for where they were. We then started and continued on our way up. From the time we struck until we got the people off the tow-boat, it was somewhere about twenty minutes, I should judge. The people on the tow-boat did not remark to me or in my hearing, on which side we struck the tow-boat. Nothing of the tow-boat was visible but the hurricane roof, when we got alongside to take the people off. I did not hear any body say that the tow-boat was in tow at the time we took the people off.

The false cut-water of the "Ohio" was knocked off, and the planking of the larboard bow was a little splintered. The planking on the larboard bow, from the stern to about 15 feet, was marked by the collision. There was not the least particle of mark, the effect of collision, on the starboard bow. Mr. Mitchell was on deck at the time I went on watch. He was standing just forward of the wheel-house when I came on watch. He continued on deck all the time until the time of the collision, and afterwards I continued in the wheel-house during the whole time, until 8 o'clock. At 6 o'clock I took the wheel, and my partner the bell. The pilot stood on the forward deck, I should judge about 35 or 40 feet from the wheel-house. He kept his position all the time. He was standing there when the conversation with Captain Steele took place, which I have stated in my examination in chief. I am not particularly familiar with the navigation of the Mississippi; I am not a pilot. From my position in the wheel-house, I should judge I could have full view of the surface of the river and the banks, except the space about 20 yards forward of the vessel.

Re-examined.

I know Lieut. Mitchell was on deck, because I saw him all the time manœuvring about the wheel from the time I came on deck until 8 o'clock, when the watch was relieved. Instead of saying that the pilot kept his position, he went eight or ten feet across the deck and back again to command full view of the vessel; and I am still in the employment of the "Ohio."

(Signed,) Robert Wilson.

Sworn to and subscribed at New
Orleans, District aforesaid, this
26th day of February, A. D., 1850,
before me.

(Signed,) A. Kellogg,
U. S. Commissioner.

Henry Shaver, being duly sworn, deposes as follows:

I am at home on whatever vessel I belong to—at present, on the steamship "Ohio." My age 29 years. I was on board the "Ohio" when the collision occurred, on the 23d of January last, in the capacity of fourth engineer. I was on duty at the engine at the time of collision. I perceived the jar of the collision. At the time the first bell rang to slow her, I was about six feet from the engine, and in order to get there I had to go about 30 feet, as I was under a grating below. At the time I got there, Mr. Hover had unhooked both engines. Mr. Hover was on duty with me at the engines at the time, and as soon as he got the engines unhooked, then the bells rung to back her. I heard Mr. Scott, on deck, say, "back her, and back her strong." From the time of unhooking to the time of the order to back, it was not more than half a minute. She was instantly backed, and I am positive there were 2½ revolutions back; I think more, before the collision. I think she had lost greater part of her headway by the current before she was backed. There were two engineers on watch at the time.

Cross-examined.

Before the order to slow, she was making about 9½ or 10 turns, not to exceed that, I think. The steam did not exceed to ½ an inch when she stopped. She probably rose up to 10¼ in steam after stopping. I expected there would be a difficulty about it, as I heard from deck that she had sunk a steamboat, and I noted the time and the steam. It was twenty-five minutes past four o'clock.

Sworn to and subscribed at New Orleans, District aforesaid, this 26th day of February, A. D., 1850, before me.
(Signed,)
HENRY SHAVER.

(Signed,) CHAS. A. KELLOGG,
U. S. Commissioner.

WILLIAM SCOTT, being duly sworn, deposes:

I am 40 years of age, and reside in the city of New York. I was on board of the "Ohio" when the collision occurred, on the 23d January last, in the capacity of chief engineer. At the time of the collision I was standing about midships on deck between the two wheel-houses, by the gangway that goes down to the engine room. The "Ohio" was on the right hand side of the river at the time, near the eastern bank, at 30 or 40 yards distance from the bank, as near as I could recollect. I came on deck about 20 minutes before the collision took place, and remained on deck all the time until after the collision occurred. The "Ohio" was east of the centre of the river, and was still going to the eastward. When I came on deck she was going up the river bearing to the eastward. When I came on deck she was nearer the middle of the river than to the eastern bank, but was east of the middle of the river. My attention was first called to the tow by Captain Kinney, who said, "there is a light and a tow coming down." I observed the light and heard the exhaustion of the steam from the working of his engines. When I first saw the tow, I should judge she was between two or three miles distant. It was perhaps from 8 to 12, it may be 15 minutes from the time I first saw the tow, until the collision. The moment Captain Kinney made this remark to me, as above stated, he gave orders to the quarter-master to port his helm; he gave the order a second time, and again a second time, "port your helm hard aport," and the quarter-master replied, "it was hard aport." He answered at each order, "he was aport." About that time I remarked to Captain Kinney that she (the tow-boat) was together.

He immediately gave orders to stop her—I likewise hollowed pretty strongly to do so. By this time I got to the hatchway, right over the engines, and hollowed again to "stop her—to work her back strong," as we were likely to come together. I saw the engines working back. All the time of the collision, the tow was bearing to the eastern shore. Just before the collision, she sheered across the bow, and the "Ohio" passed over her. I had no idea we would strike the bark at all, but supposed that striking against the steamboat would stop the "Ohio," as we were going at a very slow rate. The tow was working ahead, I thought, until within a very short time before the collision. I have an indistinct recollection to have heard bells aboard the tow-boat a moment before the collision. When I saw the tow at a distance of two or three miles off, the "Ohio" was going parallel with the east shore, at about a distance of thirty or forty yards from that shore. The order to port the helm was given immediately afterwards. The order to port the helm would have the effect of carrying her to the eastward towards the bank. Her direction from this time until the time of collision was still nearer shore, until the quarter-master observed that we were as near the bank as we could get. He (Capt. Kinney) replied, "He did not care, so long as we were in the proper place." Capt. Kinney, after the collision, called my attention to the place where the ship lay at the time of the collision, and requested me to notice it, so that if there was any difficulty about it, I could state the place. I did notice it.

The night was rather damp—the air heavy. Still there was good chance to see; there was a mist and some moon. It was not what I call a dark night. I could see both shores of the river.

At the time I first saw the tow-boat, I should judge she was westward of the middle of the river. She (the tow-boat) came down near the centre of the river, as I should judge, until she got within a length or two of us. She then began to alter her course, sheering to the eastward, and run across our bow; that is, that was her direction. Before she got across our bow, she struck us. I mean to say that the tow was coming down the river, and apparently coming into us. She was coming towards us all the time. There were three signal lights hung out on the "Ohio" that night, one on each wheelhouse, and one against the top of the forward smoke-pipe.

Cross-examined.

After the order to port the helm, there were no orders to starboard the helm. I did not hear any, and I was near by. The "Ohio," on deck, is near three hundred feet long. The keel is two hundred and sixty. I should not think we were going by the shore more than six or seven miles on an average while we were running.

My profession is that of engineer, and not as seaman.

(Signed, WILLIAM SCOTT

Sworn to and subscribed at New Orleans, District aforesaid, this 26th day of February, A. D., 1850, before me.

CHARLES A. KELLOGG,
U. S. Commissioner.

GEORGE F. SMITH, being duly sworn, deposes:

I reside in Brooklyn, State of New York; was on the steamship "Ohio" at the time of the collision with the "Diana" and "Col. Stanton," on the 23d January; was employed on the "Ohio" as wheelsman or quarter-master; was on watch at the time of, and had been on watch for about twenty minutes previous to the collision. At the time of the collision, the "Ohio" was on the eastern shore, with reference to the bank. I saw the tow-boat before the collision, I should judge, full quarter of a mile distant, to distinguish it was a vessel. I had seen her lights some time before. I cannot give a guess as to the distance the boat was when I first saw the light; it is so uncertain. At the time I saw the tow-boat to distinguish her to be a vessel, at the distance of about a quarter of a mile off. The "Ohio" was on the eastern bank, running parallel with the shore. At the time, the "Ohio" was about sixty or seventy yards from shore, on account of a flat, according to the orders of the pilot. Before I saw the vessel, I put the helm aport so as to get around the flat.

The pilot had instructed me to put the helm aport, for after we had got above the flat, there was a bold shore, and we could hug the shore. Capt. Kinney observed to me that there was a boat coming down, seeing her lights, and ordered me to keep the helm aport, and to keep the lights of the boat, which proved to be the tow, on our port bow. I obeyed the orders. Capt. Kinney the third time gave the orders to port the helm. The next order was, "hard aport." Feared I would run ashore, to which Capt. Kinney replied, "Never mind; hard aport; we now have a bold shore; better run ashore than have an accident." Then he says, "What is the fellow trying to do—he will be afoul of us." The chief engineer spoke at the same time, "He will be afoul of us, for he is coming athwart our bows." The order was then immediately given by Capt. Kinney, the pilot, to stop her. She was stopped. The next order was to back her, which was done. At the time of the collision, the "Ohio" was headed in towards the eastern bank at a distance, I should judge, of twenty-five or thirty yards.

When I first discovered the tow, so as to make out what she was, at a distance of a quarter of a mile about, she was in the middle of the river. When I first saw the light she was rather on the western shore.

From the time she was at a distance of about a quarter of a mile off, when I first made out what she was, she was pointing all the time, up to the time of the collision, towards the eastern shore. I cannot say positively in what manner the boats struck. I can only give an opinion according to my judgment, that our vessel met her on her starboard bow, passed clean through her, and struck the bark about the waist or midships. The shock broke them apart, and the tow-boat passed down the larboard side of the "Ohio." The bark remained athwart the bow of the "Ohio," until she backed out; then the bark passed on the starboard side of the "Ohio," and in shore. The chimneys of the tow-boat fell on the larboard side of the "Ohio" forecastle. The larboard side of the "Ohio" struck the tow-boat—that is as near as I can judge, for it was pretty near head on with the "Ohio;" pretty near the bows or stem. The bark was on the larboard side of the tow-boat. I should think the wind was from the east, but cannot say from what particular point.

I heard a conversation, abreast of the wheel-house, about six feet from me, between Captain Kinney, and a person whom I learned afterwards to have been the Captain of the tow-boat, and who was addressed by the name of Captain Steele, and replied to that address. Captain Kinney asked, "Captain Steele, what the devil were you trying to do, what possessed you to come down this side?" He says, "Captain Kinney, when I first saw you, I thought you were a boat lying over at the wood-yard, and then I found you were not and took you to be a low-pressure boat coming up the river." Captain Kinney replied, "Even if I was, still I was on the right side of the river, even after our backing, and filling, and picking up the people, you can still see we are on the eastern shore after all." Captain Kinney then called upon Captain Steele to look and see for himself. Captain Steele then says, "I know it," and then asked Captain Kinney, "What lights are those"—pointing to the S. W. Pass Lights. Captain Kinney replied, "Those are the S. W. Pass Lights, and S. Pass Lights"—pointing them out. I should judge this conversation occurred about 5½ o'clock the same morning.

I should judge the heading of the "Ohio" was about stopped, or nearly stopped, at all events, at the time of collision. I cannot be positive about this, for I was not looking at the shore when I saw this boat coming down afoul of us. I was looking at them more than to the shore. I heard no bells on the tow-boat, and cannot say whether her engines were stopped, but her headway was not.

I had a conversation with the steersman of the "Diana" on her passage up, about 9 o'clock of the same morning with the collision. I did not know at the time that he was steersman. I saw several of our persons talking to him, and I knew he was from one of the other vessels. I heard him say he was at the wheel of the tow-boat. I then asked him, "if he was wheelsman?" He said, "he was." I then asked him, "what he was doing on the east side of the river, coming down with the tow?" He made the reply, "that when he first saw us, he thought we were a boat laying over to a wood-yard, wooding up. When he saw we were not laying at the wood-yard, he then thought we were a low-pressure boat coming up the river. The pilot of the tow-boat at that time," he said, "ordered him to put the wheel starboard, and go to the east side of the river, inside of us. He put his helm starboard, and when he got near enough to us to see what we were, and found there was not room enough to go inside of us, he stopped her." I asked him "if the tow-boat backed?" He said, "no." I then asked him, if his helm was starboard at the time of collision?" He said, "it was hard starboard." I then asked, "if the pilot of the tow-boat was in the pilot-house before the collision?" He said, "no, the pilot left the pilot-house at the time of the collision, and where he went to he did not know." I do not know the name of the wheelsman of the tow-boat with whom I had this conversation. He came up with us to the city, and his hands were dressed by our doctor, for he had hurt them at the wheel at the time of collision.

Cross-examination.

I took my place at the wheel perhaps 8 or 10 minutes after 4 o'clock. My watch commenced at 4 o'clock. The man whom I relieved told me, when I relieved him, that we had just left the coal-yard. At the time I took the wheel, I could not see the lights of the tow-boat coming down. I may have been at wheel 5 or 6 minutes before I noticed the lights of the boat coming down the river. It was impossible to distinguish what it was when I first saw the lights of the tow, and it was only when within about a quarter of a mile distance, that I was able to distinguish that it was a tow-boat coming down; at this time the tow-boat was in about the middle of the river. At the time I made out the vessel to be a tow-boat, we had not got above the flat; the vessel was then a quarter of a mile off. I am not acquainted with the navigation of the Mississippi river. I cannot say positively at what place the collision occurred, from my own knowledge. I know it was in the pass. I am still employed on board the "Ohio."

Sworn to and subscribed at New Orleans, District aforesaid, this 27th day of February, A. D., 1850, before me.

(Signed,) GEORGE T. SMITH.

(Signed,) CHAS. A. KELLOGG,
U. S. Commissioner.

N. B.—The proctors for libellants reserve all exceptions in regard to the *conversations* related by the witnesses in the foregoing depositions.

(Signed,) CHARLES A. KELLOGG,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
Owner of Propeller "Col. Stanton."
vs.
J. & R. GEDDES, ALS.,
of late Independent Tow-Boat Co.

Deposition of
MOSES EZEKIEL,
For (Claimants of steamship " Ohio " in 1651 *and* 2.)

Taken under commission at New York, on the 9th day of April, 1851, by GEO. W. MORTON, U. S. Commissioner, on interrogatories and cross-interrogatories.

Offered in evidence for libellant, C. M. RUTHERFORD, January 19th, 1857.

MOSES EZEKIEL, being duly sworn, deposes:

Interrogatory 1st. Were you aboard the steamship "Ohio," commanded by Captain Schenck, at the time of any collision between her and another vessel or vessels on the Mississippi river? If yea, in what capacity where you so aboard? Were you employed thereon, or were you a passenger? What is your age?

Answer.—I was on board the steamboat "Ohio," commanded by Captain Schenck, at the time of the collision with a steam tow-boat or tug on the Mississippi river. I was a passenger on board the "Ohio," and was not otherwise employed thereon. I am 24 years of age.

Interrogatory 2d. State, as near as you can, when said collision occurred, namely, the year, month, day, &c., &c. What vessel or vessels she came in collision with.

Moses Ezekiel answers,—I was, in January, 1850, in the latter part of the month, I can't recollect the precise day, but on that voyage we left New York on the 12th, and arrived at New Orleans about the 24th. It was about 4 o'clock in the morning, or quarter-past 4, perhaps.

The collision was with the steam tow-boat "Diana," which had in tow a vessel called the "Col. Stanton."

Interrogatory 3d. On what part of the "Ohio" were you at the moment of collision? If on deck, how long prior thereto had you been on deck? If below deck, what length of time elapsed from the moment of collision until you got on deck?

Answer.—At the moment of the collision I was standing right in front of the wheel-house on the upper deck, by the side of the pilot. I had been on deck for several hours—ever since 12 o'clock, I think.

Interrogatory 4th. Which bank of the river or pass was the "Ohio" nearest to at the moment of collision, or at the time you first noticed her position after the collision? How far was she from such bank, as well as you can judge? And how was she heading?

Moses Ezekiel answers.—He saith the "Ohio" was, at the moment of collision, a great deal nearest to the eastern or starboard bank of the river, and had been going up nearest to that bank for some time before the collision. At the moment of collision she was not, I should think, more than eight or ten yards from the bank. She was so near that it seemed to me that I could almost jump ashore. She was heading up the river, that is as near as I can say.

Interrogatory 5th. What was the relative position of the several vessels at the moment of collision, and immediately before and after the collision? How were the tow-boat and her tow heading? Had the headway of the tow-boat and her tow been stopped up to the moment of collision? Had the headway of the "Ohio" been stopped?

Moses Ezekiel answers.—When I first saw the steam tow-boat and her tow, the "Ohio" was going up the river much nearest to the eastern or starboard bank, and the other vessels came down heading towards the eastern shore, and seemed to me to be trying to get inside of us, between us and the eastern bank.

They came around a turn in the river, and appeared to come across the east bank, and the man in the wheel-house of the "Ohio" said stop her, and I ran at the same moment to the wheel-house and called out, "stop her."

The wheels were immediately reversed, and the headway of the "Ohio" was stopped, or very nearly stopped, when they struck. The tow-boat and tow were heading directly upon us, and appeared to run into us rather than the "Ohio" into them.

Their headway was not stopped at all that I could see. They kept right on till they struck. The "Col. Stanton" was lashed to the larboard side of the tow-boat as they came down. When they struck the "Ohio," they parted. The "Col. Stanton" went to the east of the "Ohio," and the tow-boat on the west.

I know the wheels of the "Ohio" had been reversed before they struck, and at the moment she had very little if any forward heading, and if the tow-boat had stopped its motion, I don't think they would have come together at all.

Interrogatory 6th. What effect had the collision on the smoke-pipes or chimneys of the tow-boat "Diana?"

Moses Ezekiel answers.—It had the effect to make them fall over.

Interrogatory 7th. Did said smoke-pipes or chimneys remain standing or did they fall? and if the latter, did they fall into the river or upon one of the vessels? and if upon one of the vessels, which vessel?

Moses Ezekiel answers.—They fell over upon the bow or forward deck of the "Ohio," crosswise.

Interrogatory 8th. If you have answered that said chimneys fell on the "Ohio," did they fall lengthwise of the "Ohio" or crosswise? Did they fall from the bow towards the stern or from larboard towards the starboard? or from starboard towards the larboard?

(Signed,) JNO. FINNEY, S. E. SIMONDS,
For Respondents.

No cross-examination.

Proctors, HUNTONS and BRADFORD, BENJAMIN & MICON.

Moses Ezekiel answers.—They fell over from the larboard towards the starboard side of the "Ohio," crosswise on the forecastle.

(Signed,) M. EZEKIEL.

(Signed,) GEO. W. MORTON,
U. S. Commissioner.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
Owner of Propeller " Col. Stanton,"
vs.
J. & R. Geddes, et. als.
Of late Independent Tow-Boat Company.

Depositions of

Wm. Chapman and W. A. Hyde.

(*For claimants of steamship "Ohio" in* 6651 *and* 2.)

Taken before and certified on the 23d May, 1850, by

Chas. A. Kellogg, U. S. Commissioner, in presence
Proctors, of Benjamin Bradford and W. E. Murphy, Esqs.,
For Libellants, and
Finney and Simonds for Respondents

Offered in evidence for Rutherford, libellant, on the 19th January, 1857.

William Chapman, being duly sworn, deposes:

I am about twenty-five years of age; I am a married man, and my occupation is that of river pilot; have been pilot about three years. During this time have been engaged as pilot in the Union line of tow-boats between New Orleans and Balize; am acquainted with Capt. Kinney, and have known him about six years. This is the same Capt. Kinney who pilots the "Ohio," "Falcon," and ships of that line on the Mississippi river. I have served under Capt. Kinney as mate and pilot. I was with him about ten months. Before that time, I served under him as steersman all the time between here and the Balize.

I never could see but that Captain Kinney could see as well as other men. He could see as well as I could. I knew nothing about his sight that would prevent him from being a good pilot. Kinney told me that he had a defect in one of his eyes; if he had not told me this, I never would have known it. From my knowledge of him as a pilot, I have always found him a very careful man, and capable either to command or pilot a vessel. From my experience, while serving on the same boat with him, I know that Capt. Kinney could discern objects at as great a distance, and as clearly as myself and others on board. I have heard him say that he had a "game eye." I know where Scott's house is, on the south-west pass in the Mississippi river. I should judge it was about two miles from Scott's house down to a growth

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

Chas. M. Rutherford,
owner of propeller "Col. Stanton,"
vs.
John & Robert Geddes, and als.

Depositions of

W. Mitchell, H. R. Davenport & James Findley Schenck.

(*for claimants of steamship* "*Ohio*" *in* 6651 *and* 2.)

Taken at New Orleans, 11th and 12th of April, 1851, before, and certified, by Wm. H. Hunt, U. S. Commissioner on interrogatories, in presence of

Proctors, { W. C. Micon, Esq.,
E. A. Bradford, Esq.

Offered in evidence for C. M. Rutherford, libellant, January 19th, 1857.

Interrogatories to be propounded to Wm. Mitchell, who being duly sworn, answers:

Interrogatory 1st. In your testimony heretofore taken, you have said that "the 'Ohio' was running on the east side of the river at the time of collision, but whether she had been running on the east side before, I do not know, as my watch commenced at 4 o'clock; at the time of the collision she was more than 30 or 40 yards from the bank."

Please state, therefore, on which bank of the river the "Ohio" was when you first relieved watch and came on deck?

Answer.—I do not know.

Interrogatory 2d. Have you any reason to believe, and do you or do you not believe, that from the time you first came upon deck to relieve watch until the time of collision, that the "Ohio" could have changed or did change her position from the east bank to the west, and from west to east, and whether the "Ohio" was or was not at the time of the collision on the same side of the pass, that she was at the time that you relieved watch?

Answer.—I do not know where the "Ohio" was when I relieved watch, but at the time of the collision she was nearer the east bank than the west, within 30 or 40 yards of the east bank.

14th Interrogatory. (Of those to be propounded to Captain Schenck.)

Who was the deck-officer of the "Ohio" on duty at the time of the collision?

W. Mitchell, answers.—I was the deck-officer on the "Ohio" at the time of the collision.

15th Interrogatory. (Of those to be propounded to Captain Schenck.)

What, and how many, and where were the lights of the "Ohio" at the time of the collision?

Answer.—The "Ohio" carries three lights, one on each wheel-house and the other on the smoke-stack. She always carries them at sea and in the river. They are invariably lighted at sundown, and put out at sunrise. The light on the smoke-stack is very brilliant, and may be seen at a distance of 6 to 10 miles.

Interrogatory 16th. (Of those to be propounded to Captain Schenck.)

Did she ever have bow-lights, or any other lights than those you have described.

Answer.—She never had any other lights than described.

Interrogatory 17th. (Of those to be propounded to Captain Schenck.

In the testimony of McGinness, taken on behalf of libellants in this case, he states:

As soon as I got on board the "Ohio," the officers of the "Ohio" questioned me; as far as I could judge, it was the head officer. He said to me, "*You had no lights out.*" "*You have no lights on your bow neither,*" I answered. The officer turned to a person I took to be the captain of the "Ohio," and said, "You did not have any lights put out last night on her bows." Soon after he turned back to me and asked if I thought the bark was hurt? I replied that I thought it was sunk by this time. He then said to some one, "If the bark is sunk, it is our loss."

You will state if any such conversation took place within your hearing, knowledge or belief, and whether or no you have not strong reasons for believing its material statements are untrue.

W. Mitchell answers.—No such conversation took place within my hearing or knowledge or belief, as that referred to in the interrogatory. I certainly believe it untrue.

Interrogatory 18th. (Of those to be propounded to Captain Schenck.)

Did Mr. Mitchell (the officer of the deck) make any such statement about the bow-light, as is alleged by McGinniss?

W. Mitchell answers.—I made no such statements.

Interrogatory 20th. (Of those to be propounded to Captain Schenck.)

Did or did not Capt. Steele or any other person within your hearing and knowledge, from the "Diana" or "Col. Stanton," at that time insist or pretend that the "Ohio" was not ascending the river by the eastern bank from the moment that the steamers were in sight of each other, or that she was not in her right place on the eastern bank, and as close to the shore as she could safely be run, at the time the collision occurred?

W. Mitchell answers.—I heard no such assertion made as that in the interrogatory.

Interrogatory 22d. (Of those propounded to Capt. Schenck.)

Do you or do you not understand it to be the general custom for ascending boats from the pilot's station to the point of collision, to hug the eastern shore of the river?

Answer.—I have been told by the pilot, Capt Kinney, that such is the custom, and we are generally on the eastern shore from the pilot up to a point where there is a shallow opposite a clump of trees, the place of which I cannot designate on the map now shown me. On that point we do not cross over, but keep around the shallow, and keep on the eastern shore still. I do not know exactly the place we cross, as the pilot takes charge of the vessel in the river.

Interrogatory 24th. (Of those propounded to Capt. Schenck.)

Look at the map marked B, sketched by the engineer, Maurice Harrison, and say if it contains a faithful and accurate sketch of the south-west pass, and more particularly state if it be correct with reference to objects and distances between what is marked on the map as the pilot's station on the eastern bank of the pass, and Scott's, on the western bank thereof.

W. Mitchell answers.—As near as I can judge, the map appears correct. With regard to the objects and distances, I cannot recollect.

Interrogatory 25th. (Of those to be propounded to Captain Schenck.)

Look at the marks on the map opposite the words, "approximate point of collision," and say whether they represent, according to your judgment, the place and position of the vessels at the time of collision, and whether or not the upper mark represents the position of the "Diana" and the "Stanton," and the lower one that of the "Ohio" at the moment of collison?

Answer.—With respect to the place in the river I cannot say, but as it regards the position of the boats, I think it correct.

Interrogatory 26th. (Of those to be propounded to Captain Schenck.

Describe and designate on the map B, the position of the coal-yard in reference to the pilot's station. Is it or is it not on the western side of the river, and if yea, state if the "Ohio" took in coal there at any time between the night of the 22d and of the morning of the 23d January, 1850?

W. Mitchell answers.—The coal yard is on the western shore, but the relative position of the coal yard with regard to the pilot station I cannot tell. The "Ohio" took in coal the night of the collision.

Interrogatory 30th. (Of those to be propounded to Captain Schenck.)

Look at the book now presented to you, and purporting to be the log-book of the steamship "Ohio," and marked C, from the 16th of October, 1849, to the 22d of October, 1850, both days inclusive, and state if the same is the true, genuine and only original log-book of the steamship "Ohio" within the period stated, and what authenticity and credit is given to the same by all interested therein.

W. Mitchell answers.—The log-book marked C, is the true and genuine log-book of the "Ohio" during the time stated therein. Full authenticity and credit are given to it by all interested in it.

Interrogatory 31st. (Of those propounded to Capt. Schenck.)

Under whose superintendence or charge was the said log-book of the steamship "Ohio" kept during the period mentioned? Name the officer and his position on board the "Ohio," and state if the same was regularly subjected to your inspection, and whether or not you can testify the truthfulness and general accuracy of its contents?

Answer.—The book is kept in the hand of Mr. Davenport, the first officer of the "Ohio." It is not necessarily submitted to my observation, but I occasionally examine it.

Interrogatory 32d. (Of those propounded to Capt. Schenck.)

Turn to the log-book under dates of January 22d and 23d, 1850, and state if the entries under these dates truly state the facts they record as far as they go?

W. Mitchell answers.—I have repeatedly read the two entries of the 22d and 23d January, 1850, and consider them correct.

Interrogatory 33d. (Of those propounded to Capt. Schenck)

Do the officers of the "Ohio" wear any uniform or sword, or dress when on duty in the Mississippi river, distinguishing them from passengers or other persons?

Answer.—They do not, any one of them.

Interrogatory 34th. (Of those to be propounded to Captain Schenck.)

If you know any thing further material to the issues between the parties, state the same as fully and particularly as if specially interrogated thereto?

Answer—I know nothing.

Cross-examined in behalf of Libellants.

I have been previously examined in this case.

(Signed,) W. Mitchell.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me at New Orleans, this 11th day of April, A. D., 1851.

(Signed,) William H. Hunt,
U. S. Commissioner.

Interrogatories to be propounded to H. K. Davenport, who, being duly sworn, answers:

Interrogatory 1st. State your name, age, profession and present occupation.

Answer.—My name is Henry K. Davenport. My age is thirty. I am a passed midshipman in the United States navy, and at present first officer of the steamer "Ohio."

Interrogatory 2d. If you state you are an officer on the steamship "Ohio," state what office, and how long you have been employed, and how many trips the "Ohio" had made between New York and New Orleans, while you have been aboard of her?

Answer.—I have been first officer from 13th November, 1849, until the present time. I have been absent only on one trip, and that was in April, 1850.

Interrogatory 3d. Were you on the deck of the "Ohio" at the time of her leaving the coal-yard on the west bank of the pass on the morning of the 23d January, 1850? If yea, state the time of the morning.

H K. Davenport answers.—I was on deck when the "Ohio" left the coal-yard. I had been on deck nearly all night. It was about four o'clock in the morning when I was relieved by Mr. Mitchell. I then went below.

Interrogatory 4th. What course did the "Ohio" steer on leaving the coal-yard? Did she ascend the river from that point, or on the western shore, or did she cross over to the eastern shore?

Answer.—I did not take any particular notice of the course of the "Ohio" when she left the coal-yard. The pilot regulates that when he has charge of her.

Interrogatory 5th. In all the trips of the "Ohio" when you have been aboard of her, has she invariably ascended the river or pass on the same side thereof? And state if that side was the eastern or western side, in reference to the space between the pilot's station, the South West Pass, and the point of collision between the "Ohio" and the "Diana" and "Col. Stanton?"

H. K. Davenport answers.—We generally hug the eastern shore after crossing the bar. We run along the eastern shore from the pilot station to the place of collision.

Interrogatory 6th. From your own observation and general reputation, what is your understanding as to the custom of other steamboats and vessels in ascending the river between the points just referred to and in reference to the eastern or western sides of the pass?

Answer.—I know nothing of the custom except what Captain Kinney and the pilots tell me, which is, that vessels hug the eastern shore going up the S. W. Pass, and in coming down, keep the centre of the stream. I had not observed particularly because the ship is always in the pilot's charge in the river.

Interrogatory 7th. If you state that the "Ohio" had already crossed from the coal-yard before you were relieved from duty and went below, state what below and the moment of collision?

H. K. Davenport answers.—Fifteen or twenty minutes elapsed from the time I was relieved until the collision, as near as I can judge. I had undressed and just got into bed. I was not asleep when the collision took place. I heard the pilot sing out "stop her" and then "back her," and then I rushed out without my clothes; between the time of my leaving my berth and getting on deck the collision occurred. When I got on deck, the "Col. Stanton," was right "athwart hawse" across our bows, and the "Diana" was floating along our port side.

Interrogatory 8th. If the "Ohio" crossed from the coal-yard on the western to the eastern side of the pass, are you aware of any object to have been accomplished, or what motive there could have been, to have induced the pilot, Captain Kinney, to have crossed again to the western and then to have re-crossed to the eastern side of the pass, within the short distance between the eastern side above the coal-yard and the point of collision?

H. K. Davenport answers.—I know no reason whatever for the crossings and re-crossings referred to in this Interrogatory. I know no reason why such should have been made.

Interrogatory 9th. How long was it after the collision before you was on the deck of the Ohio? And state further, whether it was possible for the "Ohio" to have materially changed her position in reference to the shore, between the time when the collision took place and your return to the deck?

Answer.—I have already stated how soon I came on deck; it was about simultaneous with the collision, and the ship could not have changed her position with regard to the bark by the time I reached the deck.

Interrogatory 10th. When you reached the deck, was or was not your attention immediately drawn to the position of the "Ohio" in reference to the shore? If yea, by whom?

Answer.—Yes, it was by Captain Kinney, the pilot.

Interrogatory 11th. What was that position? Which shore was she nearest at that time, the eastern or the western, and at what distance from said shore--and how was she heading at that time.

H. K. Davenport answers.—I should think she was between 20 and 40 yards from the bank of the river, the eastern bank, heading up the river. My attention was particularly called to the fact by the voice of Captain Kinney, who was somewhat excited, and asking every one around him to "take notice that he was on the proper side of the river.

Interrogatory 12th. How were the "Diana" and "Stanton" heading when you first saw them after the collision, and were either or both above or below the "Ohio?"

Answer.—The bow of the bark was in towards the eastern shore. The "Diana" was on the port side of the "Ohio."

Interrogatory 13th. Did you hear any conversation between Captain Steele, the Commander of the "Diana," and Captain Kinney, immediately after the collision in reference to the causes of the same? If yea, state the purport of that conversation as near as you can.

H. K. Davenport answers.—I heard no such conversation.

Interrogatory 14th. Did you have a conversation, or others in your hearing, with the steersman or helmsman of the "Diana," immediately after the collision, in reference to the cause thereof, and in relation to a difference between the captain and pilot, immediately before the collision, as to which side of the river the "Ohio" was running just before the collision took place? If yea, state it as particularly as you can.

Answer.—I had a conversation with the helmsman of the "Diana," the man who said he was the helmsman, and who had his hand hurt by the collision. He said that the captain and pilot of the "Diana," under the impression that the "Ohio" was on the eastern bank ot the river, ordered him to put his helm a-starboard, and it was a-starboard at the time of the collision. This conversation took place at day-light, after the collision.

Interrogatory 15th. Did he attribute the blame of the collision to the management of the "Ohio," or to that of the "Diana?"

H. K. Davenport answers.—He did not attribute the fault to anybody; but the inference I drew from his conversation was, that the "Diana" had mistaken the position of the "Ohio."

Interrogatory 16th. Look at the documents marked B, purporting to be a typographical survey of the South-West Pass, by Maurice Harrison, engineer, and say, to the best of your knowledge and belief, if it be an accurate sketch and map of the Pass of the course of the river; the objects on either bank; the place and position of the boats at the time of the collision, supposing the upper mark to represent the "Diana" and the "Stanton," and lower, that of the "Ohio," or if their positions were reverse of this, say so?

Answer.—The map B, appears to me to be a correct map of the river, but I am unacquainted with the names of localities. The representation of the position of the vessels appears to be correct, to the best of my recollection.

Interrogatory 17th. Look at the book marked Document C, purporting to be the log-book of the steamship "Ohio," from October 16th, 1849, to October 22d, 1850, and say if the same is the genuine, original and only log-book of the "Ohio" during the period mentioned, and your opportunity of knowing the same.

H. K. Davenport answers.—The book (C,) is the genuine log-book of the "Ohio," and the only one kept for that period. I wrote and kept that log-book myself. The entries are all correct and made by me, except when absent, as above stated.

Interrogatory 18th. Look at the entries in log-book, under the dates of January the 22d and 23d, 1850, and say if the statement there made in reference to the collision, are accurate and truthful, so far as they go?

Answer.—The entries referred to are correct and true.

Interrogatory 14th. (Of those propounded to Capt. Schenck.)

Who was the deck officer of the "Ohio" on duty at the time of the collision?

H. K. Davenport answers.—Mr. Mitchell was the deck officer at the time of the collision.

Interrogatory 15th. (Of those propounded to Capt. Schenck.)

What and how many, and where were the lights of the "Ohio" at the time of the collision?

Answer.—We have three lights on the "Ohio,"—a green one on the starboard wheel-house, a blue one on the port wheel-house, and a clear light on the forward smoke-stack. The navy department prescribes such lights, and such positions for them, for the mail steamers.

Interrogatory 16th. (Of those propounded to Capt. Schenck.)

Did she ever have any bow-lights, or any other lights than those you have described?

Answer.—No.

Interrogatory 17th. (Of those to be propounded to Captain Schenck.)

In the testimony of McGinniss, taken on behalf the libellants in this case, he states:

As soon as I got on board the "Ohio" the officers of the "Ohio" questioned me. As far as I could judge, it was the head officer. He said to me, "You had no lights out." "You have no lights on your bow, neither," I answered. The officer turned to a person I took to be the captain of the "Ohio," and said, "You did not have any lights put out last night on her bows." Soon after, he turned back to me and asked if I thought the bark was hurt. I replied, that I thought it was sunk by this time. He then said to some one, "if the bark is sunk, it is our loss."

You will state if any such conversation took place within your hearing, knowledge or belief, and whether or no you have not strong reasons for believing its material statements are untrue?

H. K. Davenport answers.—I am next in position to Captain Schenck, on the "Ohio," and am considered head officer of the ship. No such conversation took place in my presence or hearing or belief. So far as I am concerned, the statements are positively and unequivocally untrue.

Interrogatory 18th. (Of those to be propounded to Captain Schenck.)

Did Mr. Mitchell, (the officer of the deck,) make any such statements about bow-lights, as is alleged by McGinniss?

Answer.—Not to my knowledge. The "Ohio" carries no bow-lights.

Interrogatory 20th. (Of those to be propounded to Captain Schenck.)

Did or not Captain Steele, or any other person, within your hearing or knowledge, from the "Diana" or "Col. Stanton" at that time insist, or pretend that the "Ohio" was not ascending the river by the eastern bank, from the moment that the steamers were in sight of each other, or that she was not in her right place on the eastern bank and as close to the shore as she could safely run at the time the collision occurred?

Answer.—I have no recollection of any such statement. For some time after the collision, I was aft on the starboard after guard, and assisting in saving people from the water.

Interrogatory 33d. (Of those to be propounded to Captain Schenck.)

Do the officers of the "Ohio" wear any uniform, or sword or dress when on duty in the Mississippi river, distinguishing them from passengers or other persons?

Answer.—No they do not, except the Captain, who generally wears his naval undress uniform in going out and into port.

Interrogatory 34th. (Of those to be propounded to Captain Schenck.

If you know anything further, material to the issues between the parties, state the same as fully and particularly as if specially interrogated thereto.

(Signed,) Soule & Barton,
for Claimants and Respondents.

H. K. Davenport answers.—I know nothing that I recollect at present.

Cross-examined in behalf of Libellants.

The first thing I did after getting on deck, was to sing out, "lay aft the boats." Mr. Mitchell was giving the same order. I then went below to put on my pantaloons. I then came up immediately and went aft to assist in lowering the boats and for the purpose of saving people in the water. It was a clear starlight night, as far as I recollect. Being asked at what time he heard Captain Kinney say, "Look, I am in my right place," he answers: When I first came on deck the "Stanton" was across our bows. I looked at the banks when he made the remark, because he seemed to take such an interest in it, and called on every one round to observe our proximity to the eastern bank of the river. I wrote up the log-book the morning after the accident occurred, and before arriving at the city, and before 12 o'clock that day, which was the usual time of writing up the log-book.

I recollect showing it to Captain Shenck, after I had written it.

(Signed,) H. K. Davenport,
Capt. Mid. U. S. Navy.

Examination taken, reduced to writing, and by the witness signed to before me, at New Orleans, April 11th, A. D., 1851.

(Signed,) William H. Hunt,
U. S. Commissioner.

Interrogatories to Capt. J. F. Schenck, who being duly sworn, answers:

Interrogatory 1st. State your name, age, profession, and length of time engaged therein.

Answer.—My name is James Findlay Schenck; my age is 43 years. I am a Lieutenant in the U. S. Navy, and have been 27 years a seaman.

Interrogatory 2d. For what length of time have you commanded the steamship "Ohio" between New York and New Orleans, and how many trips has she made between those ports since you have been in command of her?

Answer.—I have commanded the "Ohio" since the 20th September, 1849, and have made eighteen trips from the city of New York to the city of New Orleans, up to this time.

Interrogatory 3d. Were you in command of the "Ohio" on the morning of the 23d of January, 1850, when a collision occurred between that ship and the tow-boat "Diana," with the bark "Col. Stanton" in tow?

Captain Schenck answers.—I was in command at the time stated.

Interrogatory 4th. Who was the river pilot on the "Ohio" upon that occasion? Where did you take him on board, and state if you noticed any injury affecting either of his eyes on that occasion.

Answer.—Captain Kinney was the pilot; we took him on board at the first pilot station at the mouth of the river. I noticed no defect in either of his eyes.

Interrogatory 5th. Was or was not this pilot highly recommended to yourself and the owners of the "Ohio" for his skillfulness and care as a river pilot? If yea, state how he has acquitted himself in these respects generally, and more particularly how you was satisfied with his conduct prior to, and on the occasion of the collision referred to?

Answer.—He was highly recommended as one familiar with the river, and long employed as the captain of a tow-boat. I was better satisfied with his conduct prior to, and at the collision, than I have been since. I think that since the collision took place Captain Kinney betrayed unnecessary caution. But I still think him an excellent pilot, and would be unwilling to change him for any other.

Interrogatory 6th. Has the same pilot continued in the service of the owners of the "Ohio" since that collision took place? and state how many trips, both up and down the river, he has made with you as pilot?

Answer.—He has continued the pilot of the "Ohio" ever since, except this present trip, when prevented by illness, and he will pilot the "Ohio" on her downward trip to-morrow. He has been the pilot seventeen trips, up and down the river.

Interrogatory 7th. Has or has not the course of the "Ohio," in navigating the river upwards from the coal-yard opposite to the pilot station, up to the point of collision, and beyond it, been invariable in all her trips? and state if that course, in ascending the river, has been on the eastern or the western bank?

Captain Schenck answers.—The course of the "Ohio" from the coal-yard to the point of collision, and beyond it, has invariably been the same, and on the eastern shore; never by any accident have we been on the western shore at that point in the Pass.

Interrogatory 8th. If you state that her course between these points, in ascending the river, has been on the *eastern* bank, state if you are very positive of that fact; and if so, how near to the eastern bank she usually runs?

Answer.—The "Ohio" usually runs up along side of the eastern bank, within 60 or 70 yards, unless something occurs to make her hug the eastern shore closer. I am positive of the fact.

Interrogatory 9th. Were you on deck at the time of the collision? If not, how long since you had left the deck? State the hour, as near as you can, and particularly whether the "Ohio" was on the eastern or western bank of the river at the time you went below?

Captain Schenck answers.—I was not on deck at the time of the collision, but had left the deck some ten minutes previous thereto, immediately after the "Ohio" had crossed over from the coal-yard to the eastern shore, and I left her on the eastern shore when I went below, and found her there, on the same shore, on my return on deck.

Interrogatory 10th. If you state that the "Ohio" was on the eastern bank at the time you went below, state if the pilot (Capt. Kinney) gave you any intimation or reason to believe that he intended to cross her over to the western side, very soon thereafter?

Answer.—The pilot gave me no intimation or reason that he intended to cross her over.

Interrogatory 11th. Were you or not in your berth at the time the collision occurred, and did you or not proceed in a moment after to the deck of the "Ohio?"

Answer.—I was not in my berth, but proceeded immediately to the deck at the time of the collision, without taking time to dress myself. I had not entirely undressed for bed when the collision occurred.

Interrogatory 12th. On reaching the deck, was or not your attention instantly called to the situation of the "Ohio," in reference to the bank of the river? If yea, how and by whom?

Answer.—Capt. Kinney, the pilot, drew my attention to the position of the "Ohio" immediately, in language to this effect: "Captain, I wish you to bear witness that I am in my right place," meaning that he was close to the eastern shore.

Interrogatory 13th. What was that situation? Was she near the eastern or western bank, and at what distance from either, and what were the positions at that time of the "Diana" and the "Col. Stanton?" Were they above or below the "Ohio," and how was each vessel heading?

Capt. Schenck answers.—The "Ohio" was so near to the eastern shore, that if there had been no excuse for it, I should have ordered the pilot to haul off from it; I should have considered it too close. The "Col. Stanton" and the "Diana" were both above the "Ohio." The "Diana" was on our port bow, and the "Col. Stanton" across us, under our bow. The "Stanton," I think, was clear of us, though across our bows.

Interrogatory 14th. Who was the deck officer of the "Ohio" on duty at the time of the collision?

Answer.—Passed midshipman Mitchell, the second officer of the ship, was officer of the deck at the time of the collision.

Interrogatory 15th. What and how many, and where were the lights of the "Ohio" at the time of the collision?

Answer.—There were a white light, a red light, and a green. The white light amidships, at the top of the forward chimney; the green light and the red one on each wheel-house; the white at least fifty feet above the surface of the water. They were lighted at the time of the collision.

Interrogatory 16th.—Did she ever have bow-lights, or any other lights than those you have described?

Answer.—The "Ohio" never had other lights than those I have described, and those are the lights prescribed by the Naval Department regulations.

Interrogatory 17th. In the testimony of McGinniss, taken on behalf of libellants in this case, he states:

As soon as I got on board the "Ohio," the officers of the "Ohio" questioned me; as far as I could judge, it was the head officer. He said to me, "*You had no lights out.*" "*You have no lights on your bow neither,*" I answered. The officer turned to a person I took to be the captain of the "Ohio," and said, "You did not have any lights put out last night on her bows." Soon after he turned back to me and asked if I thought the bark was hurt? I replied that I thought it was sunk by this time. He then said to some one, "If the bark is sunk, it is our loss."

You will state if any such conversation took place within your hearing, knowledge or belief, and whether or no you have not strong reasons for believing its material statements are untrue.

Capt. Schenck answers.—I am positively certain that no such conversation as that mentioned in the interrogatory took place. I have no officer on board my ship, head officer or other officers, who would presume to address such language to me.

Interrogatory 18th. Did Mr. Mitchell (the officer of the deck) make any such statement about bow-light as is alleged by McGinniss?

Answer.—Mr. Mitchell made no such statement.

Interrogatory 19th. Were you present at a conversation which took place on board the "Ohio" very shortly after the collision between Capt. Steele, of the "Diana," and Capt. Kinney, the pilot of the "Ohio," relative to the cause of the collision? If yea, state the particulars as near as you can.

Answer.—I was present at a conversation which took place on the "Ohio" very shortly after the time of the collision, between Capt. Steele, of the "Diana," and Capt. Kinney, the pilot of the "Ohio." I do not recollect the precise language made use of by either parties, but the import of the conversation was this: Capt. Kinney exclaimed to Capt. Steele, "In the name of God, Capt. Steele, what were you doing over here?" Steele's reply was, "It is too late to talk about that, Kinney. I thought you were at the wood-yard, or one of the Galveston boats, that did not know where she was going," meaning that they carried no pilots. Some further conversation out of regard to Capt. Steele, who had just met with so serious a misfortune, thinking that Capt. Kinney was rather hard on him for running foul of us.

Interrogatory 20th. Did or did not Capt. Steele or any other person within your hearing or knowledge, from the "Diana" or "Col. Stanton," at that time insist or pretend that the "Ohio" was not ascending the river by the eastern bank from the moment that the steamers were in sight of each other, or that she was not in her right place on the eastern bank, and as close to the shore as she could safely run, at the time the collision occurred?

Answer.—The general tenor of the conversation on the part of those who came on board the "Ohio" from the "Diana" and "Col. Stanton," was apologetic for having run afoul of us. They by no means made any charge against the "Ohio." The impression on my part was, that we were the injured party—this impression growing out of facts within my own knowledge, and acknowledgments on their part. No one stated that the "Ohio" was not in her right place. I was, immediately after the accident, engaged in clearing my own vessel of the wrecks, and in saving people from the water. There may have been conversations with Capt. Kinney which I did not hear, but I am still positive that there was no charge of fault against the "Ohio," or I should have heard of it. My duties required me to visit different parts of the ship, and those of the pilot kept him near his station, about which the people from the wrecks were assembled.

Interrogatory 21st. Did you have a conversation with the helmsman or steersman of the "Diana" (who was injured in the head) shortly after the collision occurred? If yea, state that conversation, and whether or no he did declare, that there were words of warmth between the captain and the pilot of the "Diana" as to the position of the "Ohio" on the eastern or western bank just before the collision occurred?

Capt. Schenck answers.—I had a conversation with the man alluded to in the interrogatory, but I cannot say that he told me there were words of warmth between the captain and pilot of the "Diana," but he said there was a difference of opinion as to whether the "Ohio" was a boat at the wood-yard, or a Galveston boat coming up on the east side of the river, the wood-yard being on the west side of the river, and not far from opposite the place of collision.

Interrogatory 22d. Do you or do you not understand it to be the general custom for ascending boats from the pilot's station to the point of collision, to hug the eastern shore of the river?

Capt. Schenck answers.—I have never ascended the river in any boat other than my own, and I have always hugged the eastern shore.

Interrogatory 23d. After a full survey of all the circumstances preceding and attending the collision, were you or were you not satisfied that the pilot, engineers and steersmen of the "Ohio" had performed their whole duty in causing the ship to hug the eastern shore, and in slowing and stopping and backing her, as the dangers of a collision increased, and were you or were you not satisfied that all the officers, crews and passengers of the "Ohio" did all in their power, and as promptly as their safety would admit, to rescue the officers and crew of the wrecked vessels?

Answer.—I think that not the slightest blame can attach to any officer or man of the "Ohio" from this collision, and I, as the captain of the ship, am perfectly satisfied with the manner of their performing their duty in every respect. They displayed great promptness and gallantry in their efforts to rescue the crews of the wrecked vessels. In the performance of his duty, my first officer, Mr. Davenport, was particularly conspicuous.

Interrogatory 24th. Look at the map marked B, sketched by the engineer, Maurice Harrison, and say if it contains a faithful and accurate sketch of the south-west pass, and more particularly state if it be correct with reference to objects and distances between what is marked on the map as the pilot's station on the eastern bank of the river, and Scott's, on the eastern bank thereof?

Captain Schenck answers.—I have made the examination, and think the map to be correct.

Interrogatory 25th. Look at the marks on the map opposite the words, "approximate point of collision," and say whether they represent, according to your judgment, the place and position of the vessels at the time of the collision? And whether the upper mark represents the "Diana" and the "Stanton," and the lower one that of the "Ohio" at the moment of collision?

Captain Schenck answers.—I think the marks on the map representing the collision are correct as to the distance of the vessels from the shore; but as the "Ohio" had her helm aport, I think she must have been heading more towards the shore than she is represented on the map. I only speak of this collision from my impression immediately after I came on deck. I did not see it.

Interrogatory 26th. Describe and designate on the map B the position of the coal-yard in reference to the pilot's station. Is it or is it not on the western side of the river, and if yea, state if the "Ohio" took in coal there at any time between the night of the 22d and the morning of the 23d of January, 1850?

Answer.—The coal-yard is on the west side of the river, a little above the pilot station which is on the east side. We took coal there that night.

Interrogatory 27th. If you state that he did, state if you were upon deck at the time the "Ohio" left the coal-yard? And if so, what course she steered in reference to the eastern and western bank of the Pass.

Answer.—I was on deck at the time the "Ohio" left the coal-yard, and she immediately crossed the river in a diagonal direction. I left the deck when she was on the east side.

Interrogatory 28th. State what time transpired between the time you went below and the time you were on deck after the collision, and is it not your opinion that the "Ohio" could have crossed from the eastern to the western bank, and from the western to the eastern within that space of time? And state if you know any motive which the pilot could have had in making that crossing and re-crossing within the time referred to, and state if you know whether any object could have been attained thereby, other than a waste of steam, additional service of the pilot, engineer, officers and crew, and a retarding of the arrival of the "Ohio" at New Orleans."

Captain Schenck answers.—I was not absent more than ten minutes from the deck, and I am positive the ship could not have crossed and re-crossed the river in this time. I know of no object the pilot could have had in making the crossing, even if it could have been possible.

Interrogatory 29th. If at the time of collision the "Diana" and "Col. Stanton" were in the middle of the pass, was it or was it not a possible case for the "Ohio" to have approached them from the western shore, and have cut the "Diana's" bow *square off?* State the reasons for your opinion.

Answer.—It is not possible, because the river is too narrow at that place to admit of a successful manœuvre on the part of a ship of the "Ohio's" length.

Interrogatory 30th. Look at the book now presented to you, and purporting to be the log-book of the steamship "Ohio" and marked C, from the 16th of October, 1849, to the 22d of October, 1850, both days inclusive, and state if the same is the true, genuine and only original log-book of the steamship "Ohio" within the period stated, and what authenticity and credit is given to the same by all interested therein.

Captain Schenck answers.—The book C is the original and only log-book of the steamer "Ohio" between the dates specified. It is considered a faithful journal of all important transactions, such as are usually transmitted to the log-book of a ship. The courses of the ship in the river are not kept by compass.

Interrogatory 31st. Under whose superintendence or charge was the said log-book kept during the period mentioned? Name the officer and his position on board the "Ohio," and state if the same was regularly subjected to your inspection, and whether or not you can testify the truthfulness and general accuracy of its contents?

Captain Schenck answers.—The log is kept by the first officer of the ship, Mr. Davenport, who keeps a very correct account and submits it to my inspection as often as I require it; and on this occasion it was submitted to my inspection.

Interrogatory 32d. Turn to the log-book, under dates of January 22d and 23d, 1850, and state if the entries under these dates truly state the facts they record, as far as they go.

Answer.—The entries truly state the facts, as far as they go.

Interrogatory 33d. Do the officers of the "Ohio" wear any uniform or sword, or dress, when on duty in the Mississippi river, distinguishing them from passengers or other persons?

Answer.—The officers do not wear any uniform, with the exception of myself, and I usually wear my undress naval uniform.

Interrogatory 34th. If you know anything further, material to the issues between the parties, state the same as fully and particularly as if specially interrogated thereto?

(Signed,) SOULE & BARTON,
For Libellants and Respondents.

Captain Schenck answers.—Nothing further occurs to me at this moment.

Cross-examined in behalf of Libellants.

I did not hear the orders of the pilot "stop her" and "back her." I was below at the time. The ship was backing when I came up on deck. She was then barely clear of the wreck. The "Diana" was on our port bow, and the "Stanton" rather ahead of, and across us. I thought, at the time, the "Stanton" was safe, and would probably anchor. I feared that the "Diana" might set us afire, and therefore, while the ship was backing, I did not wish to get too far to render assistance, while I desired to be far enough to be safe from fire, and at the same time to avoid sinking the "Diana," by coming in collision with her again. From the great size of the "Ohio," she cannot be so easily stopped or backed as a smaller vessel.

Being asked if there was not some confusion on the deck of the "Ohio," when he came on deck, he says:

I do not think the word "confusion" expresses the state of feeling which prevailed at the time; there was nothing that approached insubordination or disorder.

Being asked, "to what was your attention directed when you first came on deck?" he says:

To no particular object to embrace the whole and the necessity of prompt action—the safety of life and property. Immediately on coming on deck, the pilot called my attention to the position of the vessels, as already stated.

(Signed,) J. FINDLAY SCHENCK.

Examination taken, reduced to writing, and by the witness subscribed and sworn to at New Orleans, this 12th day of April, A. D., 1851, before me.

(Signed,) WILLIAM H. HUNT,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.:

Evidence for Libellant.

Deposition of J. O. WHITTEMORE,
(*For claimants of steamship "Ohio."*)

Taken, under commission, at Cincinnati, Ohio, on the 11th day of April, 1850, before and certified by ALEX. MCGUFFEY, ESQ., Special Commissioner, on interrogatories and cross-interrogatories.

Offered in evidence for libellant, C. M. RUTHERFORD, January 19th, 1857.

Interrogatories to be propounded to J. O. Whittemore, Esq., who being duly sworn, answers:

Interrogatory 1st. Were you a passenger on the steamer "Ohio," on a recent trip from New York to New Orleans? If yea, state, as nearly as possible, the dates of commencement and termination of said trip.

Answer.—I was a passenger on the steamship "Ohio" on a recent trip from New York to New Orleans. She sailed from New York about three o'clock of the afternoon of Saturday, the 12th day of January, 1850, and reached New Orleans on the 23d of the same month.

Interrogatory 2d. Were you aboard said steamship "Ohio" when a collision occurred between her and the tow-boat "Diana," with the bark or propeller "Col. Stanton," in tow? If yea, state the time and place when and where said collision occurred.

Answer.—I was on board said steamship "Ohio" when a collision occurred between her and the tow-boat "Diana," with the bark or propeller, "Col. Stanton," in tow. The time, as near as I can recollect, was about four o'clock in the morning of the 23d January, 1850, about five miles, as near as I could judge, from the mouth of the Balize. It was on Wednesday.

Interrogatory 3d. State all that you know about said collision, and what was your position and opportunity of knowing what you state.

Answer.—The night before the collision I had been up until the "Ohio" anchored about three miles within or above the Balize for the purpose of taking in coal, there not being enough on board to take us to New Orleans. When the "Ohio" anchored I went below, and went to bed and fell asleep. About three o'clock in the morning of the 23d, I was awakened by the noise made by raising the anchor, and arose and dressed myself. I have never been on the Mississippi river before, and was anxious to see all that I could. At four o'clock the watch changed, and we had just got under good headway when there came a sudden crash. I was down stairs setting on my berth at the moment, talking to some of my fellow-passengers. I sprang up and went on deck, thinking we had struck a snag. As I was coming up, I heard them cry, "*She is sinking.*" The first thing that struck me was a ship (as I then thought her) ahead, and a steamboat alongside of us. The steamboat, or tug, was sinking. It seemed that we had been going in contrary directions. The ship in tow of the steam tug, and the steam tug, in attempting to cross our bows, had been struck by the "Ohio," and cut almost in two. Shortly after I reached the deck, the tug sank to her paddle-boxes and then floated. I was told that the injured craft was the "Diana." Her smoke-pipes fell over on our larboard bow. I afterwards ascertained that what I had at first glance taken to be a ship, was the bark or propeller, "Col. Stanton."

When I first saw the "Col. Stanton," she was about two hundred yards ahead of us. I could just distinguish that it was some kind of a sailing vessel. My attention was immediately drawn to the "Diana," and when I next looked for the sailing vessel, she was careened over and sunk, so that only her top masts could be seen. On my first coming on deck, hearing the cry for help, I, with others, sprang to the guards and threw ropes to the persons on board the "Diana," and by these ropes hauled them on board the "Ohio." Our boats were lowered, and pulled round the wreck, and succeeded in getting every body, except those who had taken to their own boats. After daylight we came up to these boats, for we had drifted back, as I suppose, to the point from where we had started. We stayed near the scene of disaster something like four hours before we started to come up the river again.

Interrogatory 4th. In what part of the river or pass was the steamship "Ohio" at the time of collision; that is, was she in the middle of the river or near one of the banks? and if nearer one of the banks, was it the eastern or the western bank, and how far from the said bank?

Explain fully the relative positions of the three vessels, how they were respectively heading, &c., immediately after you perceived the collision.

J. O. Whittemore answers.—At the time I reached the "Ohio's" deck, she was very near the middle of the river. If there was any difference at all, she was nearest the eastern shore. She was, I should think, fifty yards or thereabouts from the eastern shore. There was plenty of room on each side for a vessel to pass. I think the river is not very wide at that point. The "Ohio" was heading up stream; the "Diana" was lying alongside of us, her bows down stream, and the "Col. Stanton" some two hundred yards ahead of us. I could not see her distinctly, and therefore can't state how she was heading. When I saw the "Col. Stanton" afterwards, although she was very much under water, I should think her bows were down stream.

Interrogatory 3d. What lights had the "Ohio" when you retired the evening previous to the collision? Did you observe whether or not she had the same lights immediately after the collision? Were said lights in conspicuous positions? At what distance could they have been seen in such a night and such state of weather?

Answer.—When I retired the night before the collision, the "Ohio" had three large lights, one on her forward pipe, and one on each of her paddle-boxes. I did not, after the collision, notice the position of the lights. The lights I have described were the "Ohio's" usual lights. I had noticed them every night and morning from the day we started. The lights were in very conspicuous positions, I thought. I can't answer how far the lights might have been seen during the night (or rather the morning) of the collision, for I do not now remember what kind of weather it was at the time.

Interrogatory 6th. When you first observed the positions of the vessels after the collision, was the "Ohio" in motion—and if so, in what direction—was it backwards or forwards?

Answer.—Almost immediately after I reached the deck of the "Ohio" I noticed that her engines were going. Just as soon as I saw what the nature of the occurrence was, I took notice of the

"Ohio" engines to see if they were going, and found that they were not going. If the "Ohio" had any motion, she was floating with the stream.

Interrogatory 7th. What was the direction of the wind at the time of the collision?

J. O. Whittemore answers.—I don't know what was the direction of the wind at the time of the collision. Neither the "Ohio" ~~or~~ the "Col. Stanton" had any sails set.

Interrogatory 8th. Did the Captain (or pilot) of the "Diana" go aboard the "Ohio" after the collision? If yea, was the said Captain (or pilot) spoken to by any person aboard the "Ohio," and if so, by what name was he addressed, and who so addressed him? State as fully as you can the conversation that passed between said persons at that time?

Answer.—After the collision I saw on board the "Ohio" a person whom I took to be the Captain of the "Diana." They called him "Captain" at any rate. He was spoken to by the pilot of the "Ohio." I heard him called by some name, but I have forgotten what it was. I have an impression that it was Stone, or Steele, or some short name like that. At the time I refer to, the pilot of the "Ohio" was talking to this man from the "Diana," who called him by the title of "Captain." There was a crowd of persons standing around. The *substance* of the conversation is all that I can undertake to state after this lapse of time. I can't recall the words precisely. The Captain (or pilot) of the "Diana" appeared to be trying to clear himself of blame, and in answer to what he had said, the pilot of the "Ohio" said, "Captain—(naming him,) you know as well as I do that you were on the wrong side of the river." This was the substance and meaning of what he said, and is, I think *not far* from his language; but, as I said before, I can't now undertake to quote language *precisely*. The man from the "Diana" then said, "that he thought that the "Ohio" was one of the Galveston low-pressure boats, that don't know where to go." I did not then understand what he meant by saying that the Galveston low-pressure boats did not know where to go, but have since learned that there is a class of boats that don't have any settled rules for running, but just go on any side of the river that best suits their own convenience. The pilot of the "Ohio" then replied, "yes, we are a low-pressure boat, and mighty big one too," or words to that effect.

Cross-examination.

1st cross-interrogatory on behalf of the "Col. Stanton."

Where were you when the collision occurred? Were you not asleep? How long after the collision did you come on deck?

Answer.—I was sitting on the side of my berth when the collision occurred. I was not asleep. It could not have been *more* than three minutes after I heard the crash before I was on deck.

2d Cross-interrogatory on behalf of the "Col. Stanton."

Are you or were you before the collision personally acquainted with the Captain of the "Diana"—how long had you known him?

J. O. Whittemore answers.—I am not acquainted with the Captain of the "Diana." I don't know who was her Captain, if it were not the person who had the conversation with the pilot of the "Ohio," which I have related above; and him I never saw or heard of before the occasion referred to.

3d Cross-interrogatory on behalf of the "Col. Stanton."

If you say that any conversation occurred, then state particularly, where you were at the time? Who were the persons present at said conversation—how many were present—did you know them all personally? If you did, how long had you known each of them?

Answer.—At the time said conversation occurred, the parties stood right forward of the wheel-house, and I was there too, quite near them, standing on the larboard side of the pilot of the "Ohio." I did not hear the conversation begin. I saw some persons assembled and stepped up to hear what was passing, and heard the conversation which I have related. I cannot tell who were present at the conversation besides myself and the parties who were talking, (that is the pilot of the "Ohio" and the man from the "Diana," who was called "Captain.") I should judge there were about twenty persons present.

4th Cross-interrogatory on behalf of the "Col. Stanton."

If you noticed the direction or position of the boats, did you not so notice them after the collision, and how long after?

J. O. Whittemore answers.—I noticed the position of the vessels after the collision, but it was *immediately* after. I was below when the vessels struck, but ran *instantly* to the deck, and looked around to see what had happened.

5th Cross-interrogatory on behalf of the "Col. Stanton."

Did not the pilot, or some other person, call your attention to the position of the vessels? and who did so?

Answer.—No one called my attention to the position of the vessels; I observed them instantly and carefully myself, being anxious to understand exactly what had occurred, how it had happened, and what was likely to be the consequences.

6th Cross-interrogatory on behalf of the "Col. Stanton."

Where do you reside? What is your occupation or profession?

Answer.—My home is in New York city; my business is that of a grocer. I have been engaged in it for the last six years.

7th Cross-interrogatory on behalf of the "Col. Stanton."

If you are aware of any fact whatever, tending to show that this collision occurred by any fault of the "Ohio," or her pilot, state the same as fully as if more specially interrogated.

Answer.—I do not know any fact or circumstances whatever, tending (according to my judgment) to show that the collision occurred by the fault of the "Ohio," or her pilot. Indeed, I think I have stated all that I know in regard to the matter, unless further interrogatories should call my attention to some point or fact not now remembered.

Cross-examination.

On behalf of the Independent Tow-Boat Company.

1st Cross-interrogatory. What is your age?

J. O. Whittemore answers.—My age is 22.

2d Cross-interrogatory on behalf of Independent Tow-Boat Company.

If you had retired for the night, previous to the collision, state at what time you came again on deck, and what was the cause of your returning on deck?

Answer.—I did not come up on to the deck, after rising and dressing myself, until I heard the crash of the collision. I went on deck to see what had occurred. I had risen and dressed myself, designing to go on deck as soon as it was fairly day-light. It was after 4 o'clock, as I have already stated, when the collision occurred, and I went on deck.

3d Cross-interrogatory on behalf of Independent Tow-Boat Company.

If you state anything in regard to the position or direction of the boats, please state particularly where you were standing at the time you took notice of such position or direction, and if you were alone, or who were standing with you?

J. O. Whittemore answers.—When I first saw the "Col. Stanton" I was standing on the forward deck, and the "Diana" was lying along side of us. I then walked to the guard, and there I saw the condition of the "Diana," and immediately (with others) began to endeavor to save the persons on the "Diana" by throwing them ropes and cables. I was not alone; there were a number of persons with me—hands, firemen and passengers, as I suppose. I don't know who were the persons then present. I did not notice them particularly, and perhaps would not have known them if I had looked at them.

4th Cross-interrogatory on behalf of the Independent Tow-Boat Company.

Have you ever been employed in the navigation of the Mississippi river? Are you familiar with the rules and customs of boats running upon the river?

J. O. Whittemore answers.—I have never been employed in the navigation of the Mississippi river, and know nothing of the rules and customs of boats running upon that river, except about what I have been told since the collision referred to above.

(Signed,) James O. Whittemore.

(Signed,) Alex. McGuffey,
Special Commissioner.

U. S. District Court, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes, and als.

Evidence for Libellants.

Depositions of
E. B. Curtis, P. A. Hover, and G. W. West.
(*For Claimants of steamship* "*Ohio*" *in* 1651 *and* 2.)

Taken under commission at New York, on the 5th day of April, 1850, by John. W. Nelson, U. S. Commissioner, on interrogatories and cross-interrogatories.

Offered and read in evidence for libellant, C. M. Rutherford, on the 17th January, 1857.

Interrogatories to be propounded to Edward B. Curtis, who being duly sworn, answers:

Interrogatory 1st. What is your age, and where do you reside?

Answer.—I am 27 years of age, and reside at No. 229 7th street, in the city of New York.

Interrogatory 2d. Were you on board the steamship "Ohio" when the collision occurred between the said steamship and the steam tow-boat "Diana," and the propeller or bark "Colonel Stanton?"

Answer.—I was on board the steamship "Ohio" when a collision occurred between the said steamship and steam tow-boat "Diana," and the propeller or bark "Col. Stanton." It was about two miles above the town of Balize, at the mouth of the Mississippi, just over the bar. It was somewhere about the 23d of January, about ½ past 4 o'clock in the morning.

Interrogatory 3d. Were you employed on the steamship "Ohio" at that time; and in what capacity; and are you still employed on said steamship?

E. B. Curtis answers.—I was employed on board the steamship "Ohio" at the time of the collision, in the capacity of 1st Assistant Engineer. I am not now employed on said steamship.

Interrogatory 4th. Were you on duty at the time of said collision? If not, how long had you been off duty?

Answer.—I was not on duty at the time; had been off duty about half an hour, I should judge. I went off duty about four o'clock.

Interrogatory 5th. In what part of the steamship were you when your attention was first directed to the collision, or to the danger of one?

Answer.—The first I heard was the ringing of the bells of the "Ohio" to stop the engine and to go back. I was at the time at the foot of the companion-way stairs, on the larboard side, along side of the "social hall." I went then immediately on deck. I went to the side—the larboard side of the pilot-house.

Interrogatory 6th. State what you saw, heard and did, at the time of the collision, and for some minutes previously.

E. B. Curtis answers.—I saw the position of the "Ohio." She was about fifteen rods from the east bank. I first saw the tow-boat "Diana" on our larboard bow, coming hard on to our larboard bow. I saw the captain of the "Diana," I think, run aft from the wheel-house just before the collision; I saw no one else. She was coming down, I should think, at about the rate of 8 or 9 knots an hour with the current. I saw no effort made, on their part, to change the course. I heard Captain Kinney, the pilot of the "Ohio," a Balize pilot, cry out for all hands on deck to look to the position the "Ohio" was in at the time I did so. I should judge that the "Diana" lay nearly crosswise with the river, coming from the west shore. The wind was blowing strong from the east.

Interrogatory 7th. Were you or not on deck at the moment of collision? and if yea, how long had you been there?

Answer.—I was on deck at the moment of collision, and I should think I had been about from four to five minutes; I did not time it.

Interrogatory 8th. In what part of the river or pass, or on which bank thereof, was the "Ohio" at the time of the collision, and how far from the bank or shore?

E. B. Curtis answers.—On the east bank, about fifteen rods from the shore.

Interrogatory 9th. Did you see the tow-boat before the collision? If yea, how far from the "Ohio" was she when you first saw her? and in what direction was she (the tow-boat) heading, with respect to the "Ohio," and to the bank?

Answer.—Yes, sir; she was about ten or fifteen rods from the "Ohio," and, as near as I can tell, she was coming from the west shore, and, I should judge, steering south-east, and heading towards our larboard bow, and towards the bank.

Interrogatory 10th. From the direction to which the tow-boat was heading when you first saw her, what part of the river or pass did she seem to have come from? that is, did she seem to have come directly down stream or up stream, or from the other side, or how?

E. B. Curtis answers.—She seemed coming from the west side of the river.

Interrogatory 11th. What parts of the boats were brought into contact by the collision? that is, how did they strike?

Answer.—The "Diana" struck the "Ohio's" bow first, on the larboard bow of the "Ohio," under the cat-heads.

Interrogatory 12th. Do you know whether the engines of the "Ohio" were stopped, or were working back, or forward, at the moment of collision?

Answer.—I do not know; I know the bells that rang for to stop and reverse the engines.

Interrogatory 13th. What was the direction of the wind about the time of the collision?

(Signed,) L. E. SIMONDS and PRENTISS & FINNEY,
Proctors for Respondents.

Answer.—The wind was about east, as near as I can tell.
(Signed,) EDWARD CURTIS.

Cross-interrogatories.

1st Cross-interrogatory. Where do you reside, your age and occupation?

E. B. Curtis answers.—I reside at No. 229 7th street, New York. I am twenty-seven years of age, and am by occupation an engineer.

2d Cross-interrogatory. If you state that you saw the tow-boat "Diana" with the bark "Col. Stanton" in tow, before the collision, please state at what distance you first saw them, and in what position they were at that time; that is, whether they were then in the middle of the river or near to either bank, and to what bank? Where were you, then, when you first saw them? In what direction was the "Ohio" then steering?

Answer.—I have before stated that they were about ten or fifteen rods off, and the "Diana" was very near the middle of the river. This was where I first saw her, but then she was running across, and was gaining towards the east shore. I was alongside the pilot-house. The "Ohio" was going up towards New Orleans, steering alongside the bank—so near that I do not think there was room enough for another vessel between her and the bank.

3d Cross-interrogatory. At what time did you first apprehend any danger of a collision? Who was then on the deck of the "Ohio?" How soon after did the collision occur? When was your attention first drawn to the position of the "Ohio?" Were you requested by any one to take notice of the position of the "Ohio?" If so, by whom?

E. B. Curtis answers.—Not till I got on deck. I knew before that, there was danger of something, but what I did not know, by hearing the chief engineer cry out to the men or engineers on watch. Besides some few persons, Mr. Mitchell, the second mate, Mr. Kinney, the pilot, and the chief engineer, Mr. Scott, were on deck at the time of the collision. Mr. Mitchell I did not see till after the collision, but he told me that he was on deck. The collision occurred, I should say, six or seven minutes after I heard the bell ring. My attention was first drawn to the position of the "Ohio." After the collision, Mr. Kinney requested all hands to take notice of the position of the "Ohio."

4th Cross-interrogatory. Are you familiar with the rules or usages of vessels navigating the Mississippi river? Are you acquainted with the channel and localities of the river? Have you ever been engaged in the navigation of the river?

E. B. Curtis answers.—No, sir.

5th Cross-interrogatory. Do you know any fact or circumstances showing that the collision occurred through the default of the "Ohio" or her pilot? If so, please state the same as fully and particularly as if specially interrogated in respect thereto.

(Signed,) HUNTON & BRADFORD,
For Independent Tow-Boat Company.
(Signed,) BENJAMIN & MICON,
For Rutherford.

Answer.—I do not.

Sworn to and subscribed before me, this 5th April, 1850.

(Signed,) EDWARD W. CURTIS.
(Signed,) J. W. NELSON,
U. S. Commissioner.

Interrogatories to be propounded to Phillip A. Hover, who being duly sworn, deposes:

Interrogatory 1st. What is your age, and where do you reside?

Answer.—My age is thirty. I reside at Hudson, in the State of New York.

Interrogatory 2d. Were you on board the steamship "Ohio" when a collision occurred between her and the steam tow-boat "Diana" and propeller or bark "Col. Stanton," on the 23d of January, 1850? If yea, state whether you were then employed on board said steamship, and in what capacity, and whether you are still employed on board the same.

Answer.—Yes, sir; I was employed as second assistant engineer. I am not now employed.

Interrogatory 3d. Were you on duty at the time of said collision—and if yea, were you at your proper place.

Answer.—I was on duty at the time of said collision, and was at my proper place.

Interrogatory 4th. Did you perceive the shock or jar of the collision? And what orders and how many were given prior to the collision, and were they obeyed or not; and how?

P. A. Hover answers.—I did perceive the shock or jar of the collision. The bells were rung to slow, stop, and back prior to the collision. They were obeyed by slowing, unhooking, and backing. They were promptly obeyed.

Interrogatory 5th. Had there been any revolution back before the collision—if yea, how many? And what time elapsed from the commencement of the back revolutions until the moment of the collision? (Signed,)

L. E. Simonds.
Prentiss & Finney,
Proctors for Respondents.

Answer.—There had been revolutions back before the collision, but I can't tell how many. I can't tell what time elapsed from the commencement of back revolutions until the moment of collision, but I should not suppose it was a minute.

(Signed,) Phillip A. Hover.

Cross-interrogatories.

1st Cross-interrogatory. What is your age and occupation? Where do you reside?

P. A. Hover answers.—My age is 30—I reside in Hudson, New York—my occupation that of an engineer.

2d Cross-interrogatory. Where were you at the time of the collision?

Answer.—I was in the engine room standing between the engines, right alongside of the bows.

3d Cross-interrogatory. Do you know of any fact that can be of any service to the libellants—if so, please state the same.

Answer.—I do not.

4th Cross-interrogatory. If you say you were on duty, then state particularly in what part of the vessel?

Answer.—I was on the lower grating between the engines aforesaid which are about amidships of the vessel.

(Signed,) PHILLIP A. HOVER.

Sworn to and subscribed
before me, this 3d of April, 1850. }
(Signed,) J. W. NELSON,
U. S. Commissioner.

Interrogatories to be propounded to GILLESPIE S. WEST, who being duly sworn, answers:

Interrogatory 1st. Were you a passenger on the steamship "Ohio" on a trip, in the course of which a collision occurred between the said steamship on the one part, and the steam towboat "Diana" and the bark "Col Stanton" on the other part.—and if yea, were you aboard of the steamship "Ohio" at the time of the collision?

Answer.—I was a passenger on board of the "Ohio" at the time of the collision.

Interrogatory 2d. In what waters, and on what day of the month, and what hour of the day did said collision occur?

Answer.—It was in the Mississippi river, on or about the 23d of January; it was about half-past four in the morning.

Interrogatory 3d. In or on what part of said steamship were you at the moment of collision?

Answer.—I was in my state-room, at the moment of collision, that was in the starboard gangway.

Interrogatory 4th. At what time did you observe the position of the vessels in the river or pass? How far distant from the bank or shore was the "Ohio" when you observed such position, and from which bank was she at such a distance?

G. S. West answers.—Immediately after the vessel struck, the "Ohio," when I observed the position, was about sixty or eighty feet from the right hand bank of the river going up.

Interrogatory 5th. Which side of the "Ohio" came in collision with the other vessel or vessels.

Answer. The vessel struck the "Ohio" forward, just athwart her bows, a little on the larboard bow of the "Ohio," and if yea, on which side of the "Ohio" did they, and towards which side?

G. West answers.—The chimneys of the "Diana" fell athwart our forecastle deck from the larboard towards the starboard.

Interrogatory 7th. Did you or not hear any conversation between the river pilot of the "Ohio" and Capt. Steele? If yea, state such conversation as near as you can.

Answer.—I did hear a conversation between the pilot of the "Ohio" and Capt. Steele, the captain of the "Diana." I was present when Captain Steele came on board of the "Ohio." The pilot of the "Ohio" addressed him in these words: "Captain Steele, what in God's name were you doing on this side of the river?" meaning the right up. The pilot of the "Ohio" took hold of the hand of Capt. Steele and walked with him towards the starboard side of the vessel, and said to him, "Look there," pointing to the bank of the river. Capt. Steele then replied, "I saw you some distance off, and supposed you to be wooding up on the left hand side of the river." I afterwards supposed you to be one of the low-pressure steamers, and I was endeavoring to get upon the starboard side of you." While they were thus talking, some of the passengers that were upon the deck called out to the pilot of the "Ohio" that if he did not go ahead, the ship would be ashore. The pilot of the "Ohio" asked Capt. Steele if he did not see the lights of the "Ohio," there being one on each wheel-house, one red and the other white, and one clear light at the top of the forward smoke-stack, all of which were at the time lighted, and Capt. Steele replied, that he did see them; and it was in answer to this question, that he said he supposed the "Ohio" was one of the low-pressure steamboats.

Interrogatory 8th. Did you see the wheelsman of the tow-boat "Diana" aboard the "Ohio," or did you hear any statement or conversation of said wheelsman relative to the circumstances of the collision? and if yea, state how you know he was the wheelsman of the "Diana," and what were the words or substance of such statement or conversation?

G. S. West answers.—I saw the wheelsman of the "Diana" on board of the "Ohio," and I both heard and had a conversation with him relative to the circumstances of the collision. I heard he was wheelsman, because he said he was, and was so acknowledged by the crew of the "Diana," who came on board. He had his hand injured by the collision, and it was dressed by the surgeon of the "Ohio," and he afterwards came on board the "Ohio" at New Orleans to have his hand dressed again. When he came aboard, we asked him how he came to run into us, and he said he was directed by Captain Steele, and I think the pilot of the bark, "Col. Stanton," to put his wheel in such a manner as to bring the "Diana" between the "Ohio" and the bank, and in the act of doing so the vessels came together. He said that after he had found out that they could not get to the inside of the "Ohio," he put his wheel in such a way as, if possible, to clear the "Ohio," but the vessels had too much headway to effect that object.

Interrogatory 9th. Do you know any thing further that will favor the respondents in the above suits? If so state the same.

G. S. West answers.—In all the conversation between the parties as aforesaid, there was never blame attached at that by Captain Steele or any of his men or officers, to the navigation of the "Ohio," but on the contrary, the pilot of the "Diana" said that the "Ohio" was not at all in fault. In my judgment the "Ohio," at the time of the collision, was as close to her starboard bank as a ship of her class ought to be. When I came upon deck, the engines of the "Ohio" were varied.

Interrogatory 10th. What is your age and residence?

(Signed,) L. E. SIMONDS,
Proctor for Respondents.

Answer.—I am upwards of twenty-seven, and reside in the city of New York. (Signed,)
GILLESPIE S. WEST.

The libellants expressly except to evidence of conversations and statements, as inquired of, as hearsay and illegal, file for their cross-interrogatory.

1st Cross-interrogatory. Where were you when the collision occurred? If in your berth, in what part of the ship before stated. I was not asleep. I was aroused by the cry of help.

2d Cross-interrogatory. What did you do before going on deck? Did you not stop to put on your clothes, or some of them?

Answer.—I had laid down, only taking off my boots and my coat, and all I had to do before going on deck, and which I did, was to draw up my boots and catch my coat and cap, and run.

3d Cross-interrogatory. When you came on deck, how soon did you notice the position of the ship, and from what part of the deck did you observe it?

G. S. West answers.—Immediately upon coming upon deck, I noticed the position of the ship, and observed the position from the forward part of the deck of the "Ohio."

4th Cross-interrogatory. Are you personally acquainted with the captain of the "Diana?" with her steersman, or with any and which of her officers?

Answer.—I never saw them before that time, nor since. I became sufficiently acquainted with them, whilst on board, to ask questions and obtain answers. I addressed Captain Steele, and he answered to the address.

5th Cross-interrogatory. Where were you when the conversations inquired of (if any such occurred) took place? What was the hour? Who else was present? Who joined in the conversation?

Answer.—I was directly next them—so close to them that I could put my hand upon them. It was about the hour of five o'clock. There were many of the passengers and crew present, and all joined in the conversation.

6th Cross-interrogatory. State, on your oath, any fact or circumstances within your knowledge, tending to show a want of prudence or care on the part of the officers, or pilot of the steamship "Ohio," which, in your opinion, may have contributed to the accident.

G. S. West answers.—I know of no circumstance or fact showing any want of care or prudence on the part of the officers or pilot of the "Ohio" which may have contributed to the accident. (Signed,)

GILLESPIE S. WEST.

Sworn to and subscribed before me, this 4th day of April 1850. (Signed,) J. W. NELSON,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

EVIDENCE FOR LIBELLANT.

Depositions of
SAMUEL B. CONREY.

Taken, under commission, in California, County of San Francisco, on the 18th October, 1854, before and certified by H. L. LABATT, U. S. Commissioner, on interrogatories and cross-interrogatories.

Offered in evidence for libellant, C. M. RUTHERFORD, on the 19th day of January, 1857.

Interrogatories to be propounded to SAMUEL B. CONREY.

Interrogatory 1st. Do you know the libellant, C. M. Rutherford? If yea, how long have you known him?

Answer.—Yes; have known him about ten years.

Interrogatory 2d. Do you know anything about the purchase and repairing by said Rutherford of the steam propeller "Col. Stanton," in the year 1849? If yea, state all you know about it?

Answer.—Yes, I know of the purchase by the ship's papers being in my possession, and also by keeping an account current against the vessel.

Interrogatory 3d. Did you or not keep the accounts and pay out the money for Rutherford? If yea, state what amount you so paid out for the purchasing and repairing of said vessel, "Col. Stanton," and state who furnished you with the money to pay the same? State what length of time you kept said accounts, and paid out said moneys?

Samuel B. Conrey answers.—Yes; but not having the books with me, I am compelled to give the amount by mere recollection, which I think was about $35,000. C. M. Rutherford furnished the money. I kept said accounts from about June, until December, 1849.

Interrogatory 4th. If you know anything about it, state what repairs were made on said vessel. Was she taken into dock?

Answer.—She was taken into dock, coppered, and new cabin put on main deck, and many other repairs necessary to put her in complete condition.

Interrogatory 5th. Did you ever offer to purchase any portion of said vessel from Rutherford? If yea, state when and what you offered, and what was the result of your offer, and all about it?

Answer.—Yes, I did. In the summer of 1849, I offered $1,500 for one-sixteenth part. He asked $2,000; he refused to take $1,500, and I did not purchase.

Interrogatory 6th. Was or not any extra sum claimed for extra work by the ship carpenters, who repaired said vessel—if yea, state by whom, and whether Rutherford paid it—state all you know in regard to it. (Signed.)

MOTT & FRASER.
Proctors for libellants.

Saml. B. Conrey answers.—After I delivered up the accounts to Rutherford, Salters & Marcy, ship carpenters, presented a bill to C. M. Rutherford for about $1,900 which he, Rutherford, paid after determination by suit of the same, it being over and above the contract.

Cross-interrogatories.

1st Cross-interrogatory. Have you any interest in this suit? If the libellant recover, will it benefit you in any manner?

Saml. B. Conrey answers.—None whatever, not at all.

2d Cross-interrogatory. Did you contract for the repairs made on the "Col. Stanton" at the time spoken of? Did you superintend the same while they were being made? By whom were the repairs made? How often were you at the vessel while the repairs were being made? By whom was she repaired—where was she repaired?

Saml. B. Conrey answers.—No, I did not; I was at the vessel two or three times. I do not recollect whether Salter and Marcy had the whole contract or not; they had a part, however. At Algiers she was repaired.

3d Cross-interrogatory. Name all the repairs which you know of your own personal knowledge were put on said vessel at the time inquired about by the libellant?

Answer—She was taken in dock, coppered, cabin or main deck fore and aft, and the necessary repairs to a complete outfit.

4th Cross-interrogatory. Do you know anything more about the price paid for said vessel, and the repairs put on it by Rutherford, (the libellant.) than you have learned from others? If you do, please state all you know of your own personal knowledge, and how you acquired it?

Saml. B. Conrey answers.—I know from the fact that the first purchase money having been paid by Rutherford, to the best of my recollection, and the repairs were paid by myself at Rutherford's request.

5th Cross-interrogatory. Did you offer to purchase any part of the "Col. Stanton?" If yea, what price did you offer for her? Was the price offered by you based upon your personal knowledge of her value, or the information you derived from others as to her value?

Answer.—Yes, I did. I offered fifteen hundred dollars for one-sixteenth part of her. I derived no knowledge from others, but proposed to invest that sum in that species of property.

6th Cross-interrogatory. If you offered to buy any interest in said vessel or the whole, you will state the terms of payment? Had you ever bought and sold any such vessels as the "Col. Stanton" previously? If yea, how many? Were you at that time a judge of such a vessel as the "Col. Stanton?"

Answer.—I offered to buy one-sixteenth. I was to pay cash. I never bought or sold any such vessels. I was no judge of the vessel.

7th Cross-interrogatory. Do you know of your own personal knowledge when and where she was built—if yea, state the same? Do you know of your own personal knowledge how much she cost in the first instance? If yea, please state the same. From whom was she purchased?

Saml. B. Conrey answers.—I do not now recollect when and where she was; I think she cost about $10,000, apart from sums expended for her repairs. Do not now recollect from whom she was purchased.

8th Cross-interrogatory. How did you make the payments inquired about in the direct interrogatories? Were the payments made on the checks of the libellant? If yea, how do you know the same was for repairs made or being made on the "Col. Stanton"—or were the payments made on bills? If yea, by whom approved, and how do you know, of your own personal knowledge, the work, materials mentioned in said bill, were expended on and used in repairing said vessel?

Samuel B. Conrey answers.—I made the payments cash with my own checks. I know they were for repairs, by the character of the accounts. They were made on bills approved by C. M. Rutherford. By the fact of the approval of C. M. Rutherford, I knew they were used on repairs of the boat.

9th Cross-interrogatory. At the time the payment inquired about in the direct interrogatories were made, had you not a running account with the libellant? Were you not his banker, and did you not pay for his account, or on his checks, a much larger amount than the sum stated by you? Did you keep but one account with him? If not, how can you tell what sum was paid out for repairs on said vessel, and what was paid out for other purposes?

Answer.—I had a running account with C. M. Rutherford, but the "Col. Stanton's" account was kept separate, and all bills were promptly paid, whether I had funds in hand or not, of Rutherford. Yes, I was his banker. I kept two accounts—one against libellant, and one against "Col. Stanton."

10th Cross-interrogatory. What was the size of said vessel in all her dimensions? state as nearly as you can. What was the size, capacity and power of her engine? state as nearly as you can. (Signed,) WOLFE & SINGLETON,
Proctors for Respondents.

Samuel B. Conrey answers.—I am not at present able to state the answers to this interrogatory, as I have no recollection of the same. (Signed,) S. B. CONREY.

Sworn to and subscribed before me, this 18th of October, 1854.

(Signed,) HENRY J. LABATT,
Commissioner for Louisiana.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES & ALS.

Deposition of PETER MARCY *for Libellant.*

Before U. S. Commissioner, Friday, Dec. 19th, 1856, ROBERT M. LUSHER.

Proctors present, R. MOTT, Esq., for Libellant.
and
F. H. CLARK, Esq., for Respondents.

Offered in evidence for libellant, C. M. RUTHERFORD, January 19th, 1857.

PETER MARCY, having been duly sworn, deposes:

I recollect that in the latter end of 1849, we (Salter & Marcy, shipwrights at Algiers,) docked, caulked and coppered, and put on spars and other repairs (details not now remembered) on the steam propeller "Col Stanton." The carpenter's bill (for what has just been mentioned, exclusive of the cost of the copper) amounted to from $1,800 to $2,000. The copper may have cost from $1,200 to $1,500. I did not furnish it, and do not now remember the exact price of copper at that time. I do not recollect whether I went with the Port Warden to make a survey of the "Col. Stanton," but I have no doubt that I did, as I was in the habit of so doing almost daily.

The repairs above alluded to were, I understood at the time, intended to fit the vessel to go to California. She was put in good order, rendered sea-worthy and fit for the trip.

Cross-examined by F. H. Clark, Esq.

Our bill was paid by suit and execution against the vessel and owners. (Signed,) PETER MARCY.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES, and ALS.

Depositions of
J. S. CLARK and A. CASSDEVILLE, *Export-wardens,*
For Libellants.

Before U. S. Commissioner, Monday, 22d December, 1856, R. M. LUSHER.

Proctors present, ROBERT MOTT, Esq., for Libellant,
and
Messrs. DURANT & HORNER, for Claimant.

Offered in evidence for libellant, C. M. RUTHERFORD, January 19th, 1857.

JOSEPH CLARK, having been duly sworn, deposes.

On the 25th of December, 1849, I was a port-warden of the port of New Orleans. On that day I made a survey of the steam propeller "Col. Stanton." Mr. A. Cassdeville being my official associate on the occasion. Document X. (from record 6651; 3d, in evidence for libellant, 9th of June, 1851,) now exhibited to me, contains a full and detailed report of the survey referred to. The facts therein detailed were true at the time of the survey. We examined the vessel with care; we always did so. All that we saw at the time is set forth in Document X. I make this document a part of my deposition as far as it goes.

I signed the original of this document on the records of the port-warden's office; the original is kept there. S. High's signature to said document is his genuine signature.

Cross-examined.

I have not compared this document with the original in the port-warden's office. (Signed,) J. C. Clark.

(Signed,) Robt. M. Lusher,
U. S. Commissioner.

Augustin Cassdeville, having been duly sworn, deposes:

I was a port-warden of this port on the 25th of December, 1849; at that date I made a survey of the steam-propeller "Col. Stanton," and Document X. is a report of that survey. Mr. Joseph Clark, also a port-warden at the time, accompanied me in the survey. Mr. Peter Marcy also accompanied us. I have no personal recollection of the facts appearing on the survey, but I presume that this document contains a true statement of them. I make this document a part of my evidence at this time. I never stated anything in my survey that was not true. I think I signed the original record of this survey. I always signed records of surveys made by me.

S. High was the master warden at that time, and his signature to Document X. is genuine.

Cross-examined.

I have no recollection of having compared this document with the original record. I have not compared it.

(Signed,) A. Cassdeville.

Robt. M. Lusher,
U. S. Commissioner.

Note.—January 2d, 1857. T. J. Duvant Esq., of Counsel for the respondents, admits that Document X. is a true copy of the original *proces verbal* of survey in the Warden's office in this city. (Signed,) Robt. M. Lusher,
U. S. Commissioner

Port-warden's survey, called Document X.

Referred to by Clark & Cassdeville, by authority of the State of Louisiana.

Office of the Master and Warden of the Port.—New Orleans, Dec. 26, 1849.

The undersigned, *two* duly commissioned and sworn officers, do hereby certify: That having been thereunto required by Mr. Rutherford, owner, we did proceed to the right bank of the river Mississippi, and from thence repaired on board the three-masted schooner, steam-propeller, called the "Col. Stanton," now lying at Salter & Marcy's floating dry-dock, and assisted by Mr. Peter Marcy, a master ship-carpenter, personally to us known as being fully competent and wholly disinterested, we carefully examined the condition of this vessel.

Mr. Peter Marcy, aforesaid, reports that said vessel is just out of dry-dock, where, under his personal supervision, her hull and bottom have been thoroughly overhauled and repaired as far as necessary. She has been caulked and her seams horsed. The false keel re-placed with new. She is coppered new and re-fastened; extra knees have been put in. The deck, masts, yards, rigging, &c., have all been overhauled and repaired, or re-placed with new or re-fitted, and every requisite repair has been done to make her fit to proceed on a voyage to the Pacific Ocean. The vessel is only about three years old, and her timbers all sound and good.

We found appearances fully corroborating the foregoing statement. The hull was sound and tight in every part—the tackle and apparel mostly new, and all in perfect good order; besides one complete new suit of sails, consisting of jib, foresails, fore-topsail, fore-gaft-topsails, and fore and aft-foresails, mainsail, main-topsail, main-gaft-topsail, and main-royal, spanker, and top-gaft-sail. There is on board the following serviceable spare sails, viz: one spanker, one main-topsail, one jib, two lower studding sails, and one fore and aft-foresail. The running rigging is entirely new. She is provided with one new hawser, two full length chains, cables, one hedge, one new 735 lbs. anchor, one large anchor of about 1,100 lbs., and two boats. She is provided with machinery to propel her by steam. The boilers appeared sound and safe, and the machinery substantial and in good working order.

Accordingly, after a minute and careful survey of said vessel, finding her as hereinbefore shown, tight and staunch in every respect, and well found in every particular, we do pronounce the same, known as the propeller "Col. Stanton," to be sea-worthy and fit to proceed on and safely perform her intended or any other voyage.

In witness whereof, we have caused these presents to be entered on the records of this office, and have hereunto affixed our signatures. (Signed,) A. CASSDEVILLE.
JOSEPH CLARK.

I hereby certify the foregoing to be a true extract from the Records extant in the office of the Master and Warden of the Port of New Orleans, January 17, 1850.

(Signed,) S. HIGH,
Master Warden.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Depositions of

R. L. ROBERTSON and O. A. PITTFIELD,

For Libellant.

Before U. S. Commissioner, Wednesday, 24th December, 1856, ROBERT M. LUSHER.

Proctors present, { ROBERT MOTT, Esq., for Libellant.
and
T. I. DURANT, Esq., for Respondents.

Offered in evidence for libellant, C. M. Rutherford, January 19th, 1857.

RICHARD L. ROBERTSON, having been duly sworn, deposes:

I examined the hull of the "Col. Stanton" on or about the 29th March, 1849, being at the time a Government inspector. I gave a certificate at the time of my examination, and the result thereof, now shown in the certificate exhibited to me, and now made part of this my deposition, the facts therein set forth are true; said certificate itself was given on oath. Certificate marked as in evidence June 9th, 1851, before this Court, in No. 6651, and annexed hereto.

Cross-examined.

I have no recollection of the matter, save as my knowledge of it is refreshed by the certificate, which I know to be true. I made the examination in my usual way. I don't recollect whether I used the auger or not, but I satisfied myself.

I vacated the office of Government inspector in 1851, or, possibly, as late as 1854. I had been in that office since 1845. I think it likely that, knowing the vessel to be destined for a trip to California, I made a more careful examination than usual, but I don't now recollect.

I did not in every instance use the auger in my examinations, because I had so general a knowledge of vessels, that I did not always need the use of an instrument.

(Signed,) Richard L. Robertson.

(Signed,) Robert M. Lusher,
U. S. Commissioner.

CERTIFICATE REFERRED TO BY R. L. ROBERTSON.

United States of America, Port of New Orleans,
State of Louisiana:

Be it known to all whom it may concern: That I, R. L. Robertson, inspector of vessels propelled by steam, for the port of New Orleans, being duly appointed, commissioned and sworn for that purpose, at the request of the captain of the steam vessel called the "Col. Stanton," of the burthen of tons, was built at Philadelphia in the year 1847, and that she has been running part of each year since built; and after a thorough examination of the hull of said vessel, do hereby certify that she is, in my opinion, sufficiently sound and in all respects seaworthy and fit to be used in the transportation of freight and passengers. Given under my hand, at the said port of New Orleans, this 29th of March, 1849. (Signed,) Richard L. Robertson,
Inspector of hulls.

Oliver A. Pitfield, having been duly sworn, deposes:

I was in the employ of the U. S. Government in 1847 '8, '9, for the management or general superintendency of the transport vessels of the Government between this port and different ports of

Mexico. I had on my list and under my control, the "Col. Stanton," the "McKim" and the "Major Tompkins," among others.

The "Col. Stanton" was made a very good vessel after she came out here. I saw the "Col. Stanton" several times after she was fitted up for the Chagres trade, which was after she was sold by the Government. She had been built and converted into a double deck vessel. She had originally been a single deck vessel.

I always looked upon her as a seaworthy vessel. She had a new engine and new boilers. She was one of the four new propellers that the Government had had built, and they have been the most successful of all the vessels in the transport service.

At the Government sale, these vessels were sold so low that it was equivalent to giving them away. There was no competition at the sale. I don't recollect for what price the "Col. Stanton" was sold. She was about two years old at the time. She was heavily copper-fastened when the Government sold her, and in good running condition; every thing in fine order about her.

(Signed,) O. A. PITFIELD.

No cross-examination.

(Signed,) ROBERT M. LUSHER,
United States Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

NO. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES.

Depositions of S. M. KEYS, for libellant, before U. S. Commissioner, R. M. LUSHER, December 17th, 1856.

Proctors present, { ROBERT MOTT, Esq., for Libellant.
F. H. CLARK, E. A. BRADFORD & C. W. HORNER, for Respondents.

Offered in evidence for libellant, Rutherford, January 19th, 1857.

JOSEPH M. KEYS, having been duly sworn, deposes:

I was acquainted with the steam propeller "Col. Stanton." My means of stating her value in January, 1850, are derived from the following circumstances: In 1849, before her loss, I

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owned one-sixth of the vessel, which then stood in libellant's name exclusively, and in my subsequent settlement with the libellant, to whom I sold my interest in the vessel in full, my one-sixth was assumed to be for the value of $4,500. I sold out after the loss of the vessel. Now I am not in the slightest degree interested in the event of this suit. The "Col. Stanton" cost largely over $20,000; I think somewhere between $20,000 and $26,000. She was bought from the U. S. Government by libellant, and fitted out by him specially for the Chagres trade, and subsequently for the San Francisco trade. She was as good a vessel as I have ever seen of her class, built mostly of live oak. I was on her about three months.

Cross-examined by Mr. Clark.

I was supercargo on the "Col. Stanton." I am not much conversant with ship-building.

My knowledge of the "Stanton" is derived from my being on her in hard weather. On a trip from here to Chagres, we were thirty odd days or thereabouts before we could make a landing. We were near about sixty days making the trip to Chagres. An ordinary trip would have taken her eight or ten days as well as I knew.

I had nothing to do with the freight list of the "Stanton" on her trip to San Francisco; no interest whatever in the freight which she was expected to earn. My interest in the vessel was dead capital.

The original cost of the "Col. Stanton," when bought from the Government, was $4,500, and I then acquired one-sixth of her for $750. I cannot tell the exact amount that was expended in repairing her and fitting her out. I paid towards this, on account of my one-sixth, over $3,000. I cannot state exactly. I didn't pay the full amount. I compromised out. This amount of $3,000 I paid to Mr. Rutherford after the loss of the vessel. He had advanced me the amount by payment of my drafts.

I know, personally, that the repairs first put on the "Col. Stanton" cost about $10,000. I saw all the bills.

I don't know whether other part owners paid their shares in the repairing of the vessel, except when she was first repaired, when they did pay. (Signed,) J. M. Keys.

(Signed,) Robert M. Lusher,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Deposition of DANIEL COBB, before U. S. Commissioner, R. M. LUSHER, Saturday, December 20th, 1856.

Proctors present, { ROBERT MOTT, Esq., for Libellant,
and
C. W. HOVER, Esq., for Respondents.

Offered in evidence for libellant, C. M. RUTHERFORD, January 19th, 1857.

DANIEL COBB, having been duly sworn, deposes:

I was a member of the firm of Martin Owen & Co., of this city, in January, 1850. To libellant, C. M. Rutherford, we sold the goods mentioned in the bills now submitted from record 6651, filed June 9th, 1851, and marked S and T. The amount of bill S, was $1,850, and that of bill T, $4,529.44. These goods were sold at the current market rate of the day, and were shipped by us on the "Col. Stanton," and we took the bill of lading, now submitted and marked V, in our own name, and afterwards assigned it to C. M. Rutherford. We were paid for these goods.

Cross-examined by C. W. Hover, Esq.

The transaction was a regular business transaction; I don't remember whether we insured the property or not.

When the goods were bought, Mr. Rutherford told me they were for California, and they were of the kind usually shipped there.

(Signed,) DANIEL COBB.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

Bill S, referred to by Daniel Cobb.

Mr. C. M. Rutherford

Bot. of Martin, Owen, & Co.

200 bbls. Mess Pork at $9.25	$1,850

Cr.

By your accept. T. Handly's Df't at 30 days from 9th, interest, . .	$1,860.55	
Less 34 days int.	10.55	$1,850

Received the above.

N. O., January 9th, 1850, per Martin, Owen & Co.

John Walles.

New Orleans, January 9th, 1850.

Mr. C. M. Rutherford

Bot. of Martin, Owen & Co.

200 bbls. Mess Pork at $9.25, ...	$1,850.00
57 bbls. Hams, 35689,	
87 Tierces do. 4153 30936 at $8½, . . .	2,629.56
Drayages to boat, ...	46.88
Tel. despatch from Louisville, ...	3.00
	$4,529.44

Cr.

By your acceptance J. Handly's df't at 60 days,	457827	
Less 64 days interest,	48.83	$4,529.44

Received Payment,

per Martin, Owen & Co.

John Walles.

C. M. Rutherford *vs.* J. & R. Geddes and al: owners of propeller "Col. Stanton."

Bill T, referred to by Daniel Cobb.

Return weight of 114 *packages Hams, sold by Martin, Owen & Co. to Mr. Rutherford, January 8th,* 1850.

No. Bbls.	No. Hams.	Weights.			No. Bbls.	No. Hams.	Weights.			No. Bbls.	No. Hams.	Weights.			No. Barrels.	No. Hams.	Weights.		
1	25	284	39	245	1	21	310	40	270	1	18	195	24	171	1	17	192	24	168
1	25	299	34	255	1	27	300	41	259	1	18	196	24	172	1	18	209	28	181
1	24	241	32	209	1	26	273	28	245	1	16	192	23	169	1	18	181	25	164
1	22	251	33	218	1	25	263	32	231	1	18	197	25	172	1	18	188	24	167
1	23	278	25	253	1	23	268	24	244	1	17	197	24	173	1	16	191	24	171
1	24	262	24	238	1	25	317	41	276	1	17	199	24	175	1	18	195	24	156
1	25	272	26	246	1	25	275	28	247	1	16	198	24	174	1	16	182	26	174
1	21	272	24	248	1	23	294	40	254	1	17	191	26	165	1	18	198	26	156
1	28	319	36	283	1	25	295	38	257	1	18	196	26	170	1	17	194	24	170
1	25	277	29	248	1	22	264	30	234	1	17	191	24	167	1	17	192	25	167
1	24	281	25	256	1	24	279	31	252	1	17	184	24	160	1	17	192	23	169
1	25	295	38	257	1	21	269	26	239	1	18	194	24	170					
1	25	273	27	246	1	24	260	37	229	1	18	192	24	168	11	190	2114	270	1843
1	24	265	26	239	1	25	276	29	250	1	16	186	24	162					
1	22	261	29	232	1	24	308	25	271	1	18	193	25	168					
1	24	241	32	209	1	25	275	41	246	1	17	189	23	166					
1	24	265	50	235	1	22	261	26	236	1	18	199	23	176					
1	26	274	25	249	1	23	300	26	259	1	17	198	27	171					
1	25	264	26	238	1	23	279	26	253	1	17	191	22	169					

1	25	263	25	238	1	23	267	43	241	1	17	196	23	173
1	25	289	40	249	1	25	282	36	239	1	18	192	24	168
1	24	258	26	232	1	23	279	36	243	1	16	187	23	164
1	21	262	29	233	1	23	260	33	227	1	18	199	25	174
1	25	281	40	241	1	25	300	37	263	1	17	196	23	173
1	24	264	24	240	1	21	240	31	209	1	16	189	24	165
1	25	269	26	243	1	22	278	33	245	1	18	190	24	166
1	25	312	40	272	1	24	260	32	228	1	17	181	25	156
1	24	274	49	225	1	23	272	26	246	1	18	184	25	159
1	24	288	27	261	1	23	262	29	233	1	17	201	24	177
1	22	263	22	241	1	27	276	27	249	1	17	190	25	165
1	25	308	40	268	1	21	269	30	239	1	15	200	26	174
1	22	287	26	261	1	25	321	41	230	1	18	195	24	171
1	25	300	42	258	1	23	250	33	217	1	17	198	25	173
1	22	241	33	208	1	25	284	39	245	1	16	191	24	167
1	26	290	30	260	1	23	292	36	256	1	18	195	23	172
1	24	277	28	249	1	24	270	29	241	1	17	198	24	167
1	21	269	27	242	1	22	306	40	266	1	18	188	24	164
1	22	254	24	230	1	24	260	34	226	1	16	192	24	168
1	25	298	36	262	1	22	249	28	221	1	16	191	22	169
1	23	281	31	250	1	25	285	37	248	1	17	201	25	176
1	23	277	27	250	1	26	288	39	249	1	16	196	24	172
1	25	261	31	230						1	18	196	25	171
1	24	295	40	255						1	18	191	25	166
1	24	277	28	249						1	17	185	25	160
1	26	292	27	255						1	16	193	24	169
1	25	285	28	257						1	16	194	24	170
46	1105	12679	1416	11263	41	972	11416	1353	10063	46	786	8880	1113	7767

RECAPITULATION.

46	1105	12679	1416	11263
41	972	11416	1253	10065
46	786	8880	1113	7767
11	190	2114	271	1843
144	5053	35089	4150	30936

30936 lbs.

BILL OF LADING.

(V.)

Referred to by Daniel Cobb, Esq.

Shipped in good order and well conditioned, by Martin, Owen & Co., on board the ship called the "Col. Stanton," whereof Conkling is master, now lying at the port of New Orleans, and bound for San Francisco, to say :

B. C., 144 Packages.—One hundred and forty-four packages hams.
T. H., 400 Barrels.—Four hundred barrels mess pork.

Being marked and numbered as in the margin, to be delivered in the like good order and condition, at the port of San Francisco, (the dangers of the rivers and seas only excepted,) unto order or to assigns, he or they paying freight at the rate of as agreed upon with primage and average accustomed.

In witness whereof, the master or agent of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void. Dated in New Orleans, the 18th day of January, 1850.

(Signed,) JOSEPH H. CONKLING.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Deposition of JNO. H. OWEN before U. S. Commissioner, A. R. Jennings, April 17th, 1856.

Proctors present, { A. A. FRASER, Esq., for Libellant, and LARUE and WHITAKER, HORNER, SINGLETON, Esqs., and BRADFORD and FINNEY, for Respondents.

Offered in evidence for libellant, Rutherford, January 19th, 1857.

JOHN H. OWEN, having been duly sworn, deposes:

That he was a member of the firm of Martin, Owen & Co., in January, 1850; that on the 9th of January, 1850, or thereabouts, Martin, Owen & Co. sold to C. M. Rutherford, the libellant in this case, four hundred barrels mess pork, fifty-seven barrels and eighty-seven tierces of hams, under the instructions of C. M.

Rutherford. Witness had the articles drayed to the steamship "Col. Stanton," bound for San Francisco, and took a bill of lading for them, consigned to order. This bill of lading was endorsed by Martin, Owen & Co., making the goods deliverable to C. M. Rutherford or order. He recognizes the bill of lading marked B, as endorsed by himself.

In the accounts made out, numbered one, two and three, he recognizes as being made out by Martin, Owen & Co., as the goods shipped in said bill of lading, and the prices charged therein as what Rutherford agreed to pay and did pay for the same. That was the market value for the articles at that date.

(Signed,) JNO. H. OWEN.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Before U. S. Commissioner, Saturday, 20th December, 1856, ROBT. M. LUSHER.

Deposition of R. M. HAINES, for Libellant.

Proctors present, { ROBERT MOTT for Libellant, and C. W. HORNER, Esq., for Respondents.

In evidence for libellant, 19th January, 1857.

R. M. HAINES, being duly sworn, deposes:

I sold the goods mentioned in the annexed bill to C. M. Rutherford in January, 1850—bill marked W. The goods were sold at the current market price of the time.

I was a member of the firm of Haines & Co. The bill "W" is in my own handwriting. The goods were shipped on the steam propeller "Col. Stanton." They were shipped within a day or two after the 11th January, 1850. The bill was paid—amount $1050.74—by libellant, Rutherford.

Cross-examined by C. W. Horner, Esq.

This was a plain, regular business transaction. We did not insure the goods. We shipped the goods on the "Col. Stanton," took the dray receipts and handed them over to Rutherford.

(Signed,) R. M. HAINES.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

Bill W referred to

Mr. C. M. Rutherford,

To Haines & Co., *Dr.*

Jan'y 11th, for 100 Boxes clear Pork, 17304, at 6 cts.		$1,038.24
" " " Drayage to ship, ...		5.00
		$1,043.24
" " " " 75 Boxes returned, .	$3.75	
" " " month's storage, 75 cts., . .	3.75	
		$7.50
Cr.		
By M. White & Co., acceptance, . .	$650.00	$1,050,74
" J. B. Walsh, " . .	413.33	1,063,33
due Rutherford		12.59

New Orleans, March 11, 1850.

Rec'd payment, Haines & Co.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes and als.

Deposition of James H. Dudley for Libellant.

Proctors present, { R. Mott, Esq., for libellant.
F. H. Clack & C. W. Horner for Respondents.

Before U. S. Commissioner, Robt. M. Lusher, Dec. 19th, 1850.

James H. Dudley, having been duly sworn, deposes:

January 14th, 1850, I sold a bill of groceries to C. M. Rutherford, to be shipped on the "Col. Stanton," amounting in the aggregate to $698.71 These goods were shipped on the "Col. Stanton" two or three, possibly four or five days after the date of the sale. As far as my memory serves me, California was her destination. Mr. Rutherford paid me for the goods. I can and will furnish a detailed bill of the groceries, to be annexed to my deposition. (Signed,) James H. Dudley.

(Signed,) Robt. M. Lusher,
U. S. Commissioner.

Bill referred to by **James H. Dudley.**

New Orleans, January 14th, 1850.

Mr. C. M. Rutherford

Bought of James H. Dudley,
Wholesale Grocer, cor. of Common and Tchapitonlas sts.

Propeller "Col. Stanton" stores.

10 Bbls. Mess Pork, $12 50,	$125 00
1 " W. W. Vinegar,	4 50
2 " Onions, $3 75	7 50
1 Box Imperial Tea, 13 lbs., 75 cts.,	9 75
1 Bbl. Molasses, 42 or 41 gals., 21 cts.,	8 61
6 Boxes Codfish, 8½ cts.,	6 00
6 Bbls. Irish Potatoes, $1 75,	10 50
3 " St. Louis Flour, $6	18 00
Amount carried forward,	$188 86
10 Doz. Quart Pickles, $3 50,	35 00
2 Bbls. White Beans, $4 75,	9 50
4 Boxes Soap, 48—192, 5½ cts.,	10 56
1 " R. A. Cheese, 4 cheeses, 8½ cts.,	4 00
6 " Claret, $3,	18 00
1 Bag Rio Coffee, 162 lbs., 12½ cts.,	20 25
5 Spice, 20 cts.,	1 00
5 Ginger, ½ ct.,	63
2 Cinnamon, 3½ cts.,	75
½ Doz. Bottles Saleratus,	1 50
½ " K'y Mustard, ½, $4,	6 00
½ " True Cayenne,	1 50
2½ Bbls. 4½ E. Sugar, Ex. 140, net 280, 5,	15 00
2½ " 4½ E. Prime do., net 123, 131—254, 6½ cts.,	17 51
2½ " 4½ E. Crushed do., 100—200, ½,	26 00
10 Canvassed Hams, 159, ½,	19 87
1 Box Herrings,	75
6 Ketts No. 1 Mackerel, $2 50,	15 00
1 Keg Gosham Butter, 111, 16—95, 28¼ cts.,	26 60
1 Doz. Tomato Ketchup,	4 50
1 Keg Lard, *net* 48, 7½ cts.,	3 60
1 Doz. Sweet Oil,	5 25
6 Bbls. Kiln Dried Corn Meal, $3 75,	22 50
1 Box Vermicelli,	3 00
4½ Bbls. Rice, *net* 532, 4¾ cts.,	27 27
2 Boxes Star Candles, 2½ cts.,	20 00
1 Doz. " Table Salt,	1 50
2 Boxes Soda Powders, 2½ cts.,	50
100 Dried Peaches, 10 cts.,	10 00

300 Dried Apples, 10 cts.,	$30 00
1 Nutmegs,	1 75
1 Mace,	2 00
Amount carried forward,	$362 29
1 Cloves,	45
1 Bbl. Clarified Sugar, net 213, 8 cts.,	17 28
10 Black Pepper, 10 cts.,	1 00
2 Boxes Raisins, $3 50,	7 00
½ Bbl. Almonds, net 51, 22 cts.,	11 72
1 Box Beef Tongues, 2 doz., $7 50,	15 00
2 Gallons Best Brandy, Demijohn, 5, $4 50,	9 63
¼ Box "Linwood" Tobacco, 18 cts.,	8 10
1 " N. N. Cheese, 60 lbs., 17 cts.,	7 50
2 Bottles Pepper Sauce, 25 cts.,	50
4 Jars Olives, 30 cts.,	1 20
6 Boxes Claret, $3,	18 00
4 " Codfish,	4 00
1 " G. P. Tea, 12½ lbs., 31 cts.,	4 50
3 Gallons Madeira Wine, Demijohn, 6½, $3,	9 75
3 " Cognac Brandy, " " $3 50,	11 25
6 Half Boxes Sardines, 48 cts.,	2 88
1 Doz. Underwood's Lemon Syrup,	4 50
1 " London Porter,	3 75
Drayage,	5 25
	$698 71
Interest for four months,	18 63
	$717 34

Rec'd payment by note at four months,
JAMES H. DUDLEY.
Proper, GEO. W. TIMMIN.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Deposition of JOHN S. WALTON, for libellant, before U. S. Commissioner, ROBT. M. LUSHER, Monday, 29th of December, 1856.

Proctors present, { A. A. FRASER, Esq., for libellant,
and for Respondents,
C. R. SINGLETON, Esq., and T. J. DURANT, Esq.

Offered in evidence for libellant, C. M. RUTHERFORD, January 19, 1857.

JOHN S. WALTON, having been duly sworn, deposes:

My age is 47 years, and I have resided in Louisiana over 40 years.

I know the parties to this suit by reputation. I was Secretary of the Union Tow-Boat Company in 1850. Some boats belonging to this Company were engaged in taking goods from the wreck of the propeller "Col. Stanton." I believe that they brought up to this city a portion of her cargo saved from the wreck. I suppose this portion was sold. It was the custom of our office to credit each boat belonging to the Company with the amount of its earnings. On examining the books of the office, I have found three or four entries crediting boats in the aggregate with $2,608 in full for the services rendered to the "Col. Stanton." The goods on which these charges were made were brought up to the city by boats belonging to the Company. I believe the amount is credited on the books as so much received without specifying for what it was received.

Asked if the boats did not charge freight for bringing up this *cargo*—witness says:

I know nothing of this but what appears on the books of the office. I don't recollect of any specific charge for freight on our books. The chief business of our boats was towing; they occasionally wrecked vessels under a special clause in the Charter, but rarely carried cargo for freight. When we rendered services to a wreck, it was our custom to do all that we could on the occasion, and then charge a round sum for our services.

When vessels were too heavily laden to cross the bar, our boats would occasionally be employed in lightering them to enable them to cross the bar. There was a charge for this service of lightering. I don't recollect of any instance in which tow-boats would make special charges for freight; the Union line did make such charges for passengers.

In taking cargo out of a vessel below the bar and bringing it over the bar to enable her to cross and receive it above the bar, our boats charged an extra sum in addition to the price for towage.

Cross-examined by Mr. Durant.

The main business of these tow-boats was out *not* to carry freight and passengers for hire. (Admitted.)

Tow-boats going down to the Balize do not take freight down for pay.

In the majority of instances, passengers on these tow-boats are not charged. Customarily, there is no charge made. I have no personal knowledge of the services rendered to the "Col. Stanton," but I know that the entries referred to by me were made on the books at the time.

I have no personal knowledge of the manner in which the Independent Tow-Boat line conducted its business or managed its boats.

(Signed,) JOHN S. WALTON.
(Signed,) ROBT. M. LUSHER,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

CHAS. M. RUTHERFORD,
vs.
JOHN & ROBERT GEDDES, and ALS.

Deposition of R. B. SYKES, auctioneer, for libellant, before U. S. Commissioner, January 2d, 1857, ROBT. M. LUSHER.

Proctors present, { A. A. FRASER, Esq., for libellant,
and
T. J. DURANT, Esq., for Respondents.

In evidence for libellant, 19th of January, 1857.

REUBEN BARNARD SYKES, having been duly sworn, deposes:

I am 53 years and 5 months old; occupation, auctioneer in this city, and have been engaged in that business about eighteen years. I sold the articles saved from the wreck of the "Col. Stanton" in March, 1850, and I herewith exhibit and make it a part of my deposition, a detailed statement of the articles sold by me, and the gross proceeds thereof, amounting in the aggregate to $4,984.66, for the goods, and $230, for the full. My percentage for the sale was 2½ cts. The port-warden's charges and other expenses I cannot remember. The book on which these matters were entered was destroyed by the fire which burnt down my store in March, 1854. The bill now presented is a transcript from my original sales-book which happened to be saved.

Cross-examined by Mr. Durant.

I know nothing of the circumstances of the collision.

(Signed,) R. B. SYKES.
(Signed,) ROBT. M. LUSHER,
U. S. Commissioner.

Statement of sale referred to by R. B. Sykes.

Sales at auction by SYKES, HYDE & Co., auctioneers, at Bunley's warehouse, by order and under inspection of the port-wardens, for account of whom it may concern, of the following lot of sundries saved from the wreck of the "Col. Stanton:"

March 7, 1850.	
285 Bbls Mess Pork, $9,	$2,565 00
100 Hams, 990 lbs., 7½ cts.,	74 25
2,259 " 22,300 lbs., 6½ cts.,	1,449 50
32 Kegs Whiskey, 3,452, 24 cts.,	82 92
1 Keg Syrup, 8½ gals., 22 cts.,	1 87
1 Anchor, 733 lbs., 6¼ cts.,	45 81
8 Water Casks, $1 25,	10 00
1 Lot Standing Riggings, 440 lbs., 3½ cts.,	15 40
1 " Spars,	15 75
2 Casks Pork, 1,975 lbs., 2⅛ cts.,	56 78
1 Stove, and fixtures,	18 50
1 Lot Rope,	3 50
1 " Hoops, Blocks, Thimbles,	5 00
1 " Rigging, 285 lbs., 11 cts.,	31 35
1 Anchor, 805 lbs., 4 cts.,	32 20
1 Lot Quarter Davits, 290 lbs., 2¼ cts.,	6 52
1 Pair Bellows,	2 00
4 Sacks Salt,	2 75
1 Chain, 2,960 lbs., 4½ cts.,	133 20
1 " 1,665 lbs., 3¾ cts.,	62 43
1 Topsail Sheet Chain and Bobstay, 115 lbs., 4¼ cts.,	4 88
1 Lot Rope, 440 lbs., 4¼ cts.,	18 90
1 " Bands Wiffite, 160 lbs., 1 ct.,	1 60
1 Settee Lot of Sheets,	9 00
1 Bolt Duck,	6 00
Forward,	$4,655 91
March 7th.	
1 Lot Mattresses and Pillows,	3 75
1 Topsail,	30 50
1 Lot Rope,	2 25
1 Foresail,	20 00
1 Royal,	2 00
1 Gaff Topsail,	3 75
1 Top-gallant Sail,	4 50
1 Jib,	20 50
1 Square Foresail,	53 00
1 Forespencer,	22 00
1 Topsail,	40 50
1 "	10 50
1 Spencer,	28 50
1 "	26 00
1 Gaff Topsail,	7 00
1 Topmast Staysail,	6 50
1 Jib,	8 00
1 Fore Staysail,	13 50
1 Square Foresail,	26 00
Total,	$4,984 66
Propeller "Col. Stanton," as she now lies,	230 00

(Signed,) R. B. Sykes.

New Orleans, January 2d, 1857.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Deposition of

FREDERICK H. KNAPP.

For Libellant.

Before U. S. Commissioner, R. M. LUSHER, Dec. 17th, 1856.

Proctors present, { ROBERT MOTT, Esq, for Libellant, and E. A. BRADFORD and C. W. HORNER, Resp'ts.

Offered in evidence for Libellant, C. M. RUTHERFORD, January 19th, 1857.

FREDERICK H. KNAPP, having been duly sworn, deposes:

From July, 1849, to the early part of 1850, I was acquainted with the rates of freight from here to San Francisco. About the last of October, 1849, I despatched a vessel, of which I was one-half owner, a ship—hence to San Francisco, and in November or December, 1849, I purchased, on my own individual account, another ship, which sailed hence about the 1st of February, 1850. Meanwhile she was loading, hence I became familiar with the rates of freight between the dates specified. The rates of freight at that time, on goods estimated by measurement, averaged about one dollar per cubic foot, and $55 per ton for castings and heavy articles, such as were used for ballast, including bricks.

Cross-examined.

I have no interest, direct or indirect, in this suit; had none in the "Col. Stanton."

(Signed,) FREDK. H. KNAPP.

(Signed,) ROBT. M. LUSHER,
U. S. Commissioner.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes and als.:

Deposition of
George W. Hynson.

Before U. S. Commissioner, Robt. M. Lusher, Dec. 22d, 1856.

Proctors present, Robt. Mott, Esq., for Libellant, and Messrs. Durant & Horner for Respondents.

Offered in evidence for Libellant, C. M. Rutherford, January 19th, 1857.

George W. Hynson, being duly sworn, deposes:

I know something of the rates of freight between New Orleans and San Francisco in the winter of 1849, and the spring of 1850. Rates varied. On barrels of pork the rate was $1 per cubic foot. We gauged some at that. I engaged 400 barrels of pork on the brig "Salvadore," at $1 per foot. Barrels of pork varied from 7.6 in. to 8 feet each. Barrels of hams were at the same rate, $1 per foot. The measurement of such barrels would be the same or greater. On tierces of hams the rate would be the same per foot; tierces measure one-third more than a barrel of pork. Boxes of clear pork were shipped at 70 cts. per foot. I cannot fix the measurement, as the boxes varied in size. Boxes of pork for California, generally weighed 300 lbs; boxes of such contents would measure about 8 cubic feet. Ten gallon kegs of Whiskey were at $1 per foot; such kegs measured about 2½ feet each.

For bricks we were getting some $50 to $100 per thousand freight, taking them as ballast.

All the articles mentioned above were usual for the California trade at that time.

Cross-examined.

We commenced to load the "Salvadore" in March, 1850, and freights declined, while we were loading her, up to April.

(Signed,) G. W. Hynson.

(Signed,) Robert M. Lusher,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Deposition of
WILLIAM J. DEWEY, *for Libellant.*

Before U. S Commissioner, R. M. LUSHER, Wednesday, 24th December, 1856.

Proctors present, { ROBERT MOTT for Libellant,
and
T. J. DURANT, Esq., for Respondents.

In evidence for Libellant, 19th January, 1857.

WM. J. DEWEY, having been duly sworn, deposes:

I am acquainted with the rates of freight hence to California in December, 1849, and January, 1850.

On barrels of pork, the rate was from seventy-five cents to one dollar per cubic foot. Every thing was measured in those days, and there was the same rate on every article in barrels. A barrel of pork measured about seven feet, three inches. Barrels of ham were a third larger, generally speaking; a tierce still larger measuring. I estimate about twelve feet.

A ten gallon keg of whiskey measured about two feet. On bricks the exact rate of freight cannot be given. On one ship we took some at $5 per thousand. This was the only lot that we took. These bricks cost $8 or $10 per thousand. The price of freight varied according to the circumstances under which the bricks were taken. (Signed,) WM. J. DEWEY.

No cross-examination. (Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No. 6935.
In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES, and ALS.

Deposition of DANIEL B. MOSBY for libellant, before U. S. Commissioner, ROBERT M. LUSHER, Wednesday, 31st December, 1856.

Proctors present, { Libellant in *p. p.*,
and
F. H. CLACK, Esq., for Respondents.

Offered in evidence for C. M. Rutherford, libellant, 19th January, 1857.

Respondents' objections hereto reserved.

DANIEL B. MOSBY, having been duly sworn, deposes:

I was in San Francisco in 1850. I had a power from Mr. Rutherford to sell the "Col. Stanton" and load, on her arrival there, for $100,000. The cargo consisted, according to my recollection, of whiskey, hams and pork, a good lot of each. I cannot state exactly what prices these articles commanded in California; they varied. Whiskey, $1.25 or $1.50; may be, $2 per gallon—not so high in quantity as per drink, (that is, 'bust head.') Hams were never worth less than seventy-five cents per pound. I bought a great many, owning four steamboats, as I did subsequently. In January, 1850, I owned one. Pork ran between $40 and $60 per barrel. I cannot recollect exactly the prices; it was up one day and down the next.

I knew the propeller "Col. Stanton." She would have brought in California, at that time, in good running order, $60,000, I think.

Cross-examined.

In May or June, 1850, the value of whiskey at the San Francisco market was about $1.50 to $2.00 per gallon by the quantity. I cannot state, to the months specially, the market value of hams there, nor can I of pork.

I can't particularize as to July, or August either, during 1850. I never paid less than $40 or $50 to $60 for pork per barrel.

The market prices of all these articles during the spring and summer of 1850, were very fluctuating, sometimes up very high, and sometimes quite low, except, perhaps, as to hams, which kept up pretty high.

The voyage from here to San Francisco is attended with a grea many dangers, about Cape Horn particularly.

(Signed,) D. B. MOSBY.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

Re-examined.

Freights hence to San Francisco in January, 1850, were very high, as much as $1 per cubic foot, I think. I paid freight on the ship "Russia," and never got them back.

(Signed,) D. B. MOSBY.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

IN EVIDENCE FOR LIBELLANT, 19th JANUARY, 1857,
and before

COASTING MANIFEST.

Manifest of the Cargo on board of the Propeller "Col. Stanton," of the burden of tons, whereof J. H. Conkling is Master, bound from New Orleans to San Francisco, (California.)

NAMES OF SHIPPERS.	RESIDENCE OF SHIPPERS.	MARKS AND NUMBERS.	NO. OF ENTRIES.	PACKAGES AND CONTENTS.	NAMES OF CONSIGNEES.	RESIDENCE OF CONSIGNEES.
Thomas Hundley,	New Orleans.		1	400 barrels Mess Pork.	Order.	San Francisco.
			2	57 barrels.	"	" "
			3	87 tierces Hams.	"	" "
			4	25 boxes clear Pork.	"	" "
			5	110 kegs Whiskey.	"	" "
			6	1,000 brick.	"	" "

(ENDORSED.)

District and Port of New Orleans :

I, John W. Hinks, Deputy Collector, do hereby certify this to be a true copy of the Manifest of the Propeller "Colonel Stanton"—Conkling, master—of $136\frac{53}{95}$ tons, cleared hence for San Francisco on the 21st day of January, 1850, as per original on file in this office.

{ SEAL. } Given under my hand and seal of office at the Custom House, this 10th day of June, in the year of our Lord, one thousand, eight hundred and fifty-one.

(Signed,) J. W. HINKS,
Dy. Collector.

(ENDORSED.)

I, J. Conkling, do swear the within is a true Manifest of the whole cargo of said "Col. Stanton," and that such goods, wares and merchandize, of a foreign manufacture, as therein specified, were legally imported, and the duties thereupon have been duly paid, or secured to be paid, according to law.

(Signed,) JOSEPH H. CONKLING.

Custom House, New Orleans, this 21*st day of January,* 1850:

I certify that the above oath was taken and subscribed before me, and duplicates delivered, according to law.

(Signed,) J. W. HINKS,
Dy. Collector.

District of New Orleans, Port of New Orleans, *day of January,* 1850:

J. H. Conkling having sworn, as the law directs, to the within manifest, consisting of articles of entry, and delivered duplicate thereof, permission is hereby granted to the said "Col. Stanton" to proceed to San Francisco, California.

Given under our hands, at the Custom House of New Orleans, the day and year above written.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES, ET. AL.

Deposition of

GEORGE B. COOLIDGE,

For Libellant.

Before and certified by U. S. Commissioner, ROBERT M. LUSHER, on the 31st of December, 1856.

Proctors present, { Libellant in *p. p.* and F. H. CLACK, for Respondents.

Offered in evidence for Libellant, January 19th, 1857, Respondents' Exceptions being reversed.

GEORGE B. COOLIDGE, a witness for libellant, having been duly sworn, deposes:

I have resided 25 years in this city. I have traveled a great deal in the river between New Orleans and the Balize; about twenty or twenty-five trips on tow-boats—always down. Most of these boats charged me $2.50 passage down. The only boats that I recollect did not charge me were boats commanded by Captain Limbert, an old friend of mine.

I feel confident that the tow-boats never carried freight for planters; I don't know that they did not; I lived on the coast and never knew them to land freight, but they frequently landed passengers.

I can't say positively, but I am confident that I went on the "Diana" twice; don't know that she then belonged to the Independent Tow-Boat Company. I think that I paid passage on her; have no recollection of ever having been exempted from paying passage money by any one except Captain Limbert, on boats commanded by him; and also on the "Shark," the first trip I ever made up.

(Signed,) GEO. B. COOLIDGE.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

No cross-questions.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes, and als.

Depositions of
Alex. Miller and Henry C. Hopper,
For Libellant.

Before U. S. Commissioner, Robt. M. Lusher, Jan. 3d, 1857.

Proctors present, { A. A. Fraser, Esq., for Libellant,
No one for Respondents.

Offered in evidence for libellant, C. M. Rutherford, January 19th, 1857.

Alex. E. Miller, having been duly sworn, deposes:

I have been commanding tow-boats for about seven years. I was in the employ of the Independent Tow-Boat Company, commanding a boat, and was a stockholder. Several of the tow-boats of this line took the cargo and passengers off from the ship "Gertrude," wrecked at the South Pass, and brought them up to the city, and charged freight for the cargo, and passage for the passengers. This happened about six years ago.

(Signed,) A. E. Miller.

Respondents' Exceptions reserved.

(Signed,) Robert M. Lusher,
U. S. Commissioner.

Henry C. Hopper, for libellant, having been duly sworn, deposes:

I am 37 years of age, and by occupation a steamboat man, which I have been since 1839, always on tow-boats running between New Orleans and the Balize. I was employed in the Independent Tow-Boat Company's line of boats during the existence of the line, about the year 1850, I think. I never commanded a boat of that line, but was always pilot on board.

Question.—Do you know whether any tow-boat of that line, while you were employed on it, ever charged freight on cargo carried by it, and passage money for passengers?

Answer.—I was pilot on the "Louisville," belonging to that line, in 1850, and she did charge the ship "Amazon" freight on cotton taken from on board of her when she was aground on the bar. The "Louisville" brought the cotton to the city and stored it at the warehouse. I think the "Amazon" was bound to Liverpool; she was bound out.

The masters of the tow-boats of this line (the Independent tow-boat line) had orders to charge passage for passengers traveling on such boats, and there were printed notices stuck up in the cabins of the boats announcing the rates of passage. I know of one instance, on the tow-boat "Louisville," where the passage was charged to a man on board and collected from him. This man was one who lived at the head of the pass, and he was a stranger on the boat. I don't remember his name.

It is a common custom now with tow-boats to carry passengers. It is optional with their masters to charge or not. Strangers are generally charged for passage. Friends or acquaintances of the boat are not charged. On the return of the tow-boat to New Orleans, the master has to make a report of what the tow-boat has done, and if he has collected any passage money, he has to report it as passage.

Question.—During the existence of the Independent tow-boat line, and while you were in its employ, do you know of its boats having carried cargo or supplies down to vessels on the bar, and having charged freight on the same?

Answer.—I know of the tow-boat "Belle," belonging to the line, having carried provisions down to a ship at the bar, inside the bar, waiting for water to go out, (name of ship forgotten,) and of her having presented a bill for freight on the same, but I don't know whether the bill was ever collected. This was before the loss of the "Diana" and the "Col. Stanton," the fact of which loss I remember from the circumstances that I was the same night on the "Belle," and met the "Diana" with the "Stanton," about forty miles below the city.

Question.—Is it not now the custom, and has it not always been the custom, for tow-boats, to your knowledge, to charge freight on cargo and passage for passengers carried by them?

Answer.—It is a part of their business to carry freight and passengers, and they are also licensed as wreckers. They also frequently take passengers from ships on the bar and bring them up to the city, and are paid passage money for doing so. They also take cargoes from vessels on the bar in distress, and bring it up to the city, and in such cases they charge freight on the same.

(Signed,) H. C. Hopper.

Respondents' exceptions reserved.

(Signed,) Robert M. Lusher,
U. S. Commissioner.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes & als.

Evidence for Respondents.

Libel of

C. M. Rutherford,
vs.
Steamship "Ohio," her tackle, &c., in 6651.
Filed January 28th, 1850.

Offered in evidence for Respondents, J. & R. Geddes and als., January 19th, 1857.

To the Honorable, the District Court of the United States, in and for the Eastern District of Louisiana:

Calvin Morgan Rutherford, of New Orleans, exhibits this his libel against the steamship, a vessel called the "Ohio," now lying in the port of Lafayette, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable Court, and against all persons lawfully intervening therein in a cause of collision, civil and maritime, and thereupon the said C. M. Rutherford doth allege and articulately propound as follows, viz:

First, That libellant was and is owner of a certain steam propeller, a vessel called the "Colonel Stanton," of the burthen of one hundred and fifty tons, or thereabout, and that at the time when the cause of action hereinafter set forth arose, she was registered and employed in the business of commerce and navigation between the port of New Orleans and San Francisco, in the territory of California.

That libellant was also owner of the entire cargo of said steam propeller.

Secondly. That on the 22d day of January current, 1850, at about 9 o'clock, P. M., the said steam propeller "Col. Stanton" left the port of New Orleans on a voyage for San Francisco aforesaid, with a full cargo of bacon, pork, provisions, and sundries, all belonging to libellant, that the aforesaid propeller was well and sufficiently manned and equipped, tight, staunch, and suited for her said intended voyage: that she was to touch at Rio Janeiro for coal, but was to proceed to that port under sail, and in order to descend the Mississippi and proceed to sea, she was taken in tow by the steam tow-boat "Diana," which tow-boat took said propeller from the wharf at New Orleans, and proceeded to tow her down the river towards the Gulf of Mexico.

Thirdly. That during said voyage down the river, and when near the mouth of the river, at about the hour of 4 o'clock in the morning of the 23d inst., the steamer "Ohio" was descried coming up the river. And that said steamship "Ohio" was so negligently, improperly, and carelessly managed, that a collision took place between said steamship "Ohio" and said propeller "Col. Stanton," then in tow of said steam tow-boat "Diana," whereby the said propeller was struck and sunk in deep water, with her entire cargo, which were totally lost to your libellant; and that although some trifling articles have since been saved from the wreck, yet their value will scarcely suffice to pay the expenses of saving them.

Fourthly. That the value of said propeller "Col. Stanton" was twenty-four thousand dollars; the value of the cargo on board twelve thousand dollars, and the value of the freight for carrying said cargo to its place of destination was six thousand dollars, making in all a sum total of forty-two thousand dollars, all of which has been entirely lost to your libellant by reason of the collision aforesaid.

Fifthly. That by reason of the careless, negligent, improper and unskillful management of said steamship "Ohio," libellant is entitled to claim from said steamship as damages, the whole amount of the loss suffered by him as aforesaid, amounting to said sum of forty-two thousand dollars.

Sixthly. That all and singular, the premises are true, and are within the admiralty jurisdiction of this honorable Court, and that said collision took place at a point where the tide ebbs and flows.

Wherefore the libellant prays that process in due form of law may issue against said steamship "Ohio," her engine, machinery, boats, tackle, apparel and furniture, and that this honorable Court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief in the premises as to right and justice shall appertain.

(Signed,) C. M. RUTHERFORD.
(Signed,) BENJAMIN & MICON,
Proctors.

On the 28th day of January, 1850, appeared personally CALVIN M. RUTHERFORD, the above named libellant, and was sworn to the truth of the foregoing libel.

(Signed,) C. M. RUTHERFORD.

Sworn to and subscribed the 28th day of January, 1850, before

(Signed,) ROBT. M. LUSHER,
Dy. Clerk.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES, and ALS.

Evidence for Respondents.

Depositions of BURTON MOORE, and THOMAS McGINNIS, for (libellant in case 6651 and 2,) taken before and certified, on the 4th of February, 1850, by CHARLES A. KELLOGG, Esq., U. S. Commissioner, in presence of

Proctors, { PRENTISS, SIMONDS, for libellants,
and
BRADFORD, MICON, for respondent.

Offered in evidence for J. & R. GEDDES and als., Respondent, on the 19th January, 1857.

BARTON MOORE, for respondents, having been duly sworn, deposes:

I was on board the "Col. Stanton" at the time the collision near the mouth of the river. I was engaged as second mate on the "Stanton." At the time the collision occurred I was forward by the foremast—was on watch; had been on watch about 20 minutes. The man who was on watch with me had just gone below to get a light to look after the anchors. There was no man at the wheel or helm of the "Stanton." She was in tow of the steamboat "Diana." The collision occurred about twenty minutes after 4 o'clock, A. M. I had come on watch at 4 o'clock, A. M. The night had been clear and the moon had been up, but had gone down about half an hour. There was no fog. I had noticed before the collision in what part of the river the tow-boat had been running. She had been running, as near as I could judge, about in the middle of the river. I first saw the "Ohio" about two or three minutes before the collision. The tow-boat and the "Stanton," when I saw her, were almost in the middle of the river. I saw the "Ohio" on the right hand side—on my right hand and the right bank of the river; when I first saw her I did not take particular notice how far off she was; when she was almost abreast of us she crossed over; she struck the steamboat first—on what part I do not know; she struck us in the gangway, her jib-boom carrying away the main-topmast of the "Stanton." The "Stanton" keeled over and lay on her broadside, and after that drifted down the river. I, with the captain and twelve, escaped by a boat after she had been struck. The bow of the tow-boat was cut off by the collision, and was hanging on the "Stanton" by the forward spring cable; it drifted with it. I feel certain that the tow-boat and the "Stanton" were almost in the middle of the river, as far as I could judge at the time of the collision. When I first saw the "Ohio" I was standing forward of the foremast and near the foremast. I could see the lights of the "Ohio" distinctly just before the collision; she changed her course before the collision. I know it because I was looking at her at the time she did so. Before she changed her course I only saw her bows and her lights.

I could tell her change of course by the way she headed towards us. Before she changed her course she was heading up the river; after she changed her course until she struck us, it might be a minute, perhaps not so long.

Examined in behalf of the "Diana."

From the time I came on deck until the time of collision, I believe that the tow-boat was near in the middle of the river as I could judge. I believe the tow-boat had not changed her course, as far as I knew, but I am not certain; I did not see her change her course. After the collision the "stem" of the tow-boat drifted down the river—the bow hung on to the "Col. Stanton."

Cross-examined.

I was 18 years old last September, and live at Syre, in the State of Connecticut. I am a seaman; have been engaged as a seaman five years and a half; have never been engaged steamboating on the river Mississippi. The "Stanton" was attached to the larboard side of the tow-boat. I do not know how to designate the part of the river where the collision occurred, but know that there is an oyster-house opposite. There was a bend in the river about half a mile astern of us, which we had passed. Do not remember whether the river ahead was straight or not, but think it was straight. When I first saw the "Ohio" I should judge she might have been a quarter of a mile distant; she might have been more and might have been less; I am not certain, but that's my judgment. The tow-boat had been running in the middle of the river during the whole time I was on deck. I was on deck when it passed the bend behind us. I am not certain, but believe she ran in the middle of the river when we passed the bend. After I first saw the "Ohio," until the time of collision, I kept my eyes fixed on her all the time watching her. I did not notice that there was any change in the management of the tow-boat, except that she stopped her engines before the collision. The "Ohio" struck us almost immediately after the "Diana" stopped her engines. From the time the "Diana" stopped her engines until the collision took place it might have been twenty seconds; do not think it was more. I do not think the "Diana" was going so fast as she had been; she might have been going about six knots an hour, including the power of steam and current. Neither the "Diana" nor the "Stanton" rung their bells previous to the collision.

Re-examined in chief.

If the "Ohio" had continued in the same course as when I first saw her, there would have been no collision.

Cross-examined by consent.

I am not acquainted with the proper steam navigation nor the channels in that part of the river. The tow-boats, when they go down, always keep in the middle of the river.

(Signed,) CHAS. A. KELLOGG,
U. S. Commissioner,
Eastern District of Louisiana.

THOMAS MCGINNISS, for libellant, having been duly sworn, deposes:

"I was on board the "Stanton" at the time of the collision in the capacity of fireman. She was bound to California. She was to go from here to Rio under sail, and there to take in fuel. I *was* to be a laborer until we reached Rio, and then to commence my duties as fireman. At the time the collision occurred, I was down below asleep. The stroke of the steamer awoke me. I jumped up immediately and I ran on deck. I saw the "Ohio" lying on the top of her. I got on the anchor chain of the "Ohio" and climbed on her. I reached the anchor chain from the deck of the "Stanton." After I had got on deck both the "Stanton" and the "Ohio" lay, as it were, across the river. The "Stanton" was just drifting off from the "Ohio" when I caught the anchor chain. The "Ohio" was then lying across the river. The "Stanton," before she drifted off, lay straight in the river, when I caught the anchor chain, as near as I could judge. When she got clear of the "Ohio" the current drifted her around. I stood on the deck of the "Ohio" and watched the wrecks of the tow-boats as far as I could see. They drifted down. The stem of the tow-boat got fast to the stem of the "Ohio." They stuck together, as far as I can judge, between two and three minutes. The wreck then drifted down the river, and the "Ohio" then followed the other wreck. The "Ohio" took off all the men from the tow-boat; but when we got up to the "Stanton" there were no men on board, all having left her. At the time I got up on the deck of the "Ohio" it was clear enough to see where we were; I could see both wrecks drifting down. I feel confident that the "Ohio" lay partly pointing or quartering across the river. I cannot say to which shore she was pointing. The propeller was on the larboard of the steamboat. The "Ohio" struck her on her starboard side or steamboat side. The tow-boat and the "Stanton" were going down the river. The "Stanton" was lashed to the tow-boat side by side. The steamboat and the "Stanton" had parted when I got to the deck, and I could not tell hardly where I was. As soon as I got aboard the "Ohio," the officers of the steamship "Ohio" questioned me, (as far as I could judge from his dress and appearance, it was the head officer.) He said to me, "you had no lights out." I answered, "you have no lights on your bows either." The officer then turned to a person I took to be the Captain of the "Ohio," and said, "you did not have any lights put out last night on her bows." Soon after he turned back to me, and asked "if I thought the bark was hurt." I replied, that "I thought it was sunk by this time." He then said to some one, "if the bark is sunk, it is a loss to us."

Cross-examined by Simonds, Esq.

When I came on deck I could not say to which shore we were the nearest; as far as I could judge, both were about in the middle of the river. I could see both shores; the river is narrow there. When both the "Stanton" and the "Ohio" were lying across the river, they were heading different ways; the head of the "Stanton" to the stern of the "Ohio." The "Stanton" was partly quartering with her head down stream. The "Ohio" was quartering up. They were alongside, but drifting apart. I got off the starboard side of the "Stanton" on to the larboard side of the "Ohio." Do not know which, but think it was on the starboard side of the "Ohio;" as they lay alongside as described, the "Ohio" was on the upper side. The wreck of the tow-boat drifted down stream; the "Stanton" drifted to the left bank going down. The "Ohio" drifted down in the middle of the stream after the wreck of the tow-boat. I came up to the city on the "Ohio." This conversation referred to, on the "Ohio," took place as soon as I got on board the "Ohio." I had no more conversation afterwards with those officers. I did not learn either of their names on my way up the river. I could identify the individuals in any place if I could see them. I do not think I would know the Captain if I were to see him, but I took particular notice of the officer.

Re-examined in chief.

My residence is in New York, and expect to go to California when I get an opportunity. Was 20 years of age last December.

(Signed,) THOMAS MCGINNIS.

Sworn to and subscribed at New Orleans, District aforesaid, this 4th day of February, A. D., 1850, before me.

(Signed,) CHARLES A. KELLOGG,
U. S. Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

NO. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Evidence for Respondents.

Deposition of

G. M. BOWDITCH,
PETER CURRAN,
JACKSON MCFARLAND,
JOHN M. MEAY,
JOHN H. CONKLING.

For libellant in cases 6651 and 2, taken before and certified by U. S. Commissioner, CHARLES A. KELLOGG, on the 4th and 27th days of April, 1850, in presence of

Proctors, BRADFORD, MICON & MURPHY, for Respondents,
and
FINNEY & SIMONDS, for Libellant.

Offered in evidence for respondents, J. & R. Geddes and als., January 19th, 1857.

G. M. BOWDITCH, witness for respondents, having been duly sworn, deposes:

I am boarding-officer at the south-west pass; am acquainted with Captain Kinney, the river pilot of the steamship "Ohio," and have known him a long time. He came down to wait for the "Ohio," and stopped at my house some four or five days before she came in. He left my house about a day and a half or two days before her arrival to go down to the pilot's bayou, to keep watch for her. During the time he was at my house, one of his eyes was very much inflamed and swollen. He complained only of one, on which he said he had a sty, or something the matter with the lid. I did not hear him say any thing of the other. The eye affected was red and inflamed, and the white of the eye was very red, and a great deal of water was running from it. He was complaining all the time of his eye; he hoped Capt. Wendell would come up in the "Ohio," and said if his eye did not get better, he would go up in the "Ohio" as passenger, and not pilot her up. This affection of the eye came on after he came to my house. I noticed it after he came there. Do not recollect whether on the first or second day after he came. He continued to complain up to the time he left my house. The condition of his eye when he left my house was not any better. It seemed to fret him a good deal. I met Capt. Kinney in the street the other day, and he seemed to be angry that I was going to give testimony against him about his eye, but I don't recollect the words of the conversation. [This last objected to by respondent's counsel as incompetent testimony.

Question by libellant's counsel.—Can you state the substance of the conversation? [This question is objected to by respondent's counsel as incompetent.]

Answer.—He said the tow-boat men wanted to ruin him, and he understood that I was going to give testimony against him which would ruin him also. I do not recollect that he stated from whom he got his information that I was going to give testimony against him. Capt. Kinney said, while he was at my house, that if he were in town he could cure his eye; that there was some person there that could cure it for him. I have resided at the south-west pass about seven years. I am acquainted with the south-west pass of the river. I have examined the map of the south-west pass, made by James G. Evans, and should think it pretty correct, by the way the pass runs there. The map referred to is marked "A."

Cross-examined.

Have been acquainted with Capt. Kinney as pilot or captain of a tow-boat between New Orleans and the mouth of the passes, for ten years. He has always been considered a good pilot between New Orleans and the mouths of the passes. I never heard any one say to the contrary. I have been in a situation to judge of the reputation and standing of the pilots from the mouth of the Mississippi to the city. Capt. Kinney has been constantly, or nearly so, employed in the business as master or pilot. Capt. Kinney's business has been of as good and important a character as that of any pilot. I saw Capt. Kinney upon his return from piloting up the "Ohio," when he came down for the next boat; do not recollect how long after the collision it was; it might have been two or three weeks. I do not recollect, but think when I saw him this next time, his eye was well. I do not know the width of the upper flat, where the collision is marked to have taken place, but think it is not very wide; am not acquainted with the depth of the water. In going up the river once in a ship, I was run aground on the flat. Do not know the width of the river at the upper flat.

Question.—Did Capt. Kinney state to you what was the matter with his eye? If so, what did he say was the matter?

Answer.—He said his eye was sore, and he did not know what was the matter.

Question.—Did Capt. Kinney tell you he didn't know what was the matter with his eye?

Answer.—I don't know what he did tell me; I do not recollect. I know his eye was sore, and he was rubbing it, and whether I or he said it was a sty, I do not recollect. I believe I told him if he would let it alone it would be well enough, and not to keep rubbing it and irritating it the whole time.

(Signed,) G. M. BOWDITCH.

Sworn to and subscribed at New Orleans, District aforesaid, this 4th day of April, A. D., 1850, before me.

(Signed, CHARLES A. KELLOGG,
U. S. Commissioner, East. Dist. of La.

FOR RESPONDENTS.

PETER CURRAN, having been duly sworn, deposes:

I am forty-four years of age, and am pilot on tow-boats by profession. I have been employed in navigating between New Orleans and the Balize about fourteen years, and was first made pilot by Capt. Kinney in 1839, with the exception of the summer of 1840. I have been pilot of two boats all the time. I was on board the "Diana" at the time of her collision with the "Ohio," in the capacity of pilot.

On the evening of the 22d, we started from New Orleans with the "Col. Stanton" on our larboard side to proceed to the south-west pass. Between four and five o'clock on the morning of the 23d, we got about half way down the south-west pass, when we first saw the "Ohio's" light. Capt. Steele was standing forward of the wheel. He told me he thought there was a boat taking in wood at the pine wood-yard. We went along a little farther. Capt. Steele took the spy glass and looked at the light, and told me it was a low-pressure boat coming upon the western shore. We kept going down in the middle of the river till we got pretty near down abreast of the bunch of willows, marked "Willows," on the west bank, on the map above referred to. Capt. Steele says to me, "Peter, she is crossing over." I said, "I did not think she would cross over then, when we were down so near abreast of her." I then looked at her and saw that she was coming over at us. Capt. Steele then told me to ring the bell and stop the engines. I rung the bell, and the engine was stopped. I still kept the boat down in the middle of the river, as near as I could judge, until she came so close to us that I saw that she was going to hit us. I suspected she was going to hit us about the boilers. Capt. Steele was standing aside of the pilot house; he ran aft. I went out from the wheel between the chimneys. I had been standing at the wheel before I saw the lights, and never left the wheel until I saw she was going to hit us. I got to the forward part of the cabin. Capt. Steele, I think, got about to the cabin-door. I got to about the escape pipe. She ran into us, cut off our bow, I suppose, about the forward hatch, and ran into the "Col. Stanton." After she knocked the "Col. Stanton" away from us, I heard some one from the "Ohio" sing out to "back her." The "Ohio" then backed between sixty and seventy-five feet. Capt. Steele then sung out for them to come ahead and take us off from the "Diana," as she was sinking; she was then down to the boiler deck. They laid there a good while before they appeared to come ahead. It appeared that they were afraid to come alongside. Almost every one on board the "Diana" sung out to them to lower their boats. She still kept drifting. She did not lower her boats, nor come ahead. She kept drifting, to the best of my knowledge, ten minutes, if not longer. There were seven of us got into a little skiff we had belonging to the "Diana." We pulled around to the "Ohio." I believe while we were laying there, they gave a turn or two ahead to go alongside of the "Diana." All that were aboard of her got aboard.

At the time the "Ohio" struck us, we were in about the middle of the river, as near the middle as I could judge, heading down the river, which is the usual and proper track for a descending boat. The spot of collision was a little above the head of the flat and in the middle of the river; do not think it would have varied thirty feet from the middle of the river towards either shore. The "Ohio" came up on the western shore to the point marked "1" on the map, when she crossed over towards the point marked "2." If the "Ohio" had proceeded on in the direction in which she was running, without crossing, no collision would have occurred. From the time I first saw the lights of the "Ohio" until the collision, I think it was about ten minutes; may have been a minute or two more or less. I did not pay any attention to the time. It was not long after our engine was stopped, that the collision occurred, but it was long enough for the "Ohio" to straighten up and go clear if they had paid attention on her as I would have thought. The "Ohio" struck the "Diana" on the starboard side, and, I should judge, cut the "Diana" nearly square off. I went on board the "Diana" when they were taking her boilers, and I sounded with a skiff where her bows ought to have been, and I found her bows were gone nearly square across about the fore-hatch. The chimneys of the "Diana" fell at the time of collision. One of them fell on the "Ohio; the other went overboard, except a part, which remained on the deck of the "Diana."

I have known Capt. Kinney ever since I have been steamboating; have been on three different boats with him. While I was steamboating, Capt. Kinney used to jaw me, and say he could see further with his one eye than I could with two. I do not think he could see farther with his one eye than I could see with two. I do not know that I could see better than Capt. Kinney. Capt. Kinney told me repeatedly that he could only see with one eye. The night on which the collision occurred was a beautiful one. We had moonlight, I think, until about two o'clock, after which it was a little cloudy over head, and one could see both banks of the river very plain, and there was very little wind. I have been on the deck of the "Ohio." The deck of the "Ohio" is higher than the pilot-house of an ordinary tow-boat.

Cross-examined.

I think the wind that morning, at the time of collision; was about north-east—very light breeze. The "Diana," when I first saw the lights of the "Ohio," was coming around the point just above the house on the map. The "Diana" was then in the middle of the river.

Re-examined.

The "Diana" that night carried a large signal lantern between the chimneys, at about two-thirds the height of the chimneys. I noticed the lantern at the time we passed the "Louis Phillipe," which was going up with two vessels in tow, which was about ten minutes before we came in sight of the "Ohio," and it was then burning very brightly. After the collision it fell down on the deck of the "Diana," and continued burning after the glass was broken. From my knowledge of the Pass, the map of James G. Evans is about as correct a one as could be drawn from the Scott's plantation-house to the pilot's house. Scott's plantation is called eight miles from the bar.

Sworn to and the witness' mark affixed by him in my presence, at New Orleans, District aforesaid, this 4th day of April, A. D., 1850.
(Signed,)
PETER his ⋈ mark CURRAN.

(Signed,) CHARLES A. KELLOGG,
U. S. Commmissioner.

JACKSON MCFARLAND, having been duly sworn, deposes:

I am 23 years of age, and my profession that of engineer; was employed in that capacity on the "Diana" at the time of her collision with the "Ohio." We left New Orleans on the evening of the 22d; started down for the purpose of towing the bark "Col. Stanton" to sea. The bark was made fast to the larboard side of the tow-boat; had proceeded down to within 6 or 7 miles of the pilot station at the South-west Pass. I was called on watch at 4 o'clock on the morning of the 23d. When I first came on deck I saw the "Ohio's" light as she was coming upon the western shore. I went in and tried the water in the "Diana's" boilers, and came on the guards again. I saw the "Ohio" heading right for us; the bell was rung to stop the "Diana's" engines, and I went in and stopped them, and as soon as I stopped them I started aft, and got as far as the shaft when she struck us. She struck us forward, somewhere about the forward hatch. When she struck I ran forward and took the weights off the safety-valve, then I went aft and helped get down the boat and get into it, and went aboard the "Ohio." When I returned from gauging the water in the boilers I went upon the starboard guard about midships; when I arrived there I saw the "Ohio" heading right for us. I was not there hardly any time before the bell of the "Diana" rung to stop her; I had just time to shut the throttle valve and gain the shafts of the boat before she struck.

At this time the "Diana" was going down, as near as I can tell, in very near the middle of the river. I think she kept her direction until she was struck by the "Ohio." I cannot tell whether there was a movement of the helm to change her direction, but as far as I know, the boat did not change her position.

At the last time I came on deck, if the "Ohio" had been at the same distance on the eastern shore that she was on the western shore, I could not have seen her on account of the bark which was lashed to the larboard side of the tow-boat. If the "Ohio" had kept along the western shore in the direction she was running when I first saw her, and as she ought to have done, there would have been no collision. Am now employed on the "Persia," which belongs to the "Union Line." This collision occurred in about the middle of the Pass, between the wood-yard and Scott's house.

Cross-examined.

When I first came on deck the "Ohio" was some 2½ or may be 3 miles off. It might have been a little after 4 o'clock when I came on deck. I saw her as soon as I came on watch.

Question.—Did the "Diana" pass a point after you first saw the "Ohio," and before the collision? "I cannot tell whether the 'Diana' was above the bend or not when I first came on deck; I mean I don't know whether she was above the point or not. When a person first comes on deck he cannot see as well as after he has been on deck a while, the lights blind him so. There is no point of any consequence in the pass; there is a bend." Question. Being asked "whether as you do not know when you first came on deck if the 'Diana' was above or below the point, you might not be mistaken in the 'Ohio's' running up the western bank," replies: "I could not have been mistaken, because she was coming up the western side." Question. "In order to ascertain where another boat is, is it not necessary to know where you are yourself?" replies: "I do not think it is necessary. I know well enough where we were, to tell on which side the 'Ohio' was running. I do not recollect any land-marks near the point of collision which mark it, any more than I have already said, that it was between the wood-yard and Scott's house. There is a bunch of willows between Scott's house and the wood-yard along the west shore; I do not recollect whether abreast of the place of collision; being an engineer, it was not my business to remember it. I do not know whether the place of collision was near the bunch of willows or not." Question. "From the time you came on deck until the collision, did you or not leave the engine? and if so, how often?" Answer. "I never touched the engine until the bell rung to stop her. I tried the water. I left her after I stopped her and went aft; I did not leave her before that. After trying the water I stepped out on the guards. I left her right fast after I stopped her. We were running very nearly in the middle of the Pass when the collision occurred; we might have been a little nearer one shore than we were to the other, but there was plenty of room for a boat to pass on either side.

Question: "When you came on the guards after having tried the water as stated, was your attention drawn immediately to the 'Ohio?'" Replies, "As I stepped on the guards it was. I kept my eyes on her until the bells were rung to stop the engines. I then stepped in and stopped the engine, and ran back without observing anything further. She was not heading right straight across—what I call right straight across. She was heading nearly across the pass about as much as a boat generally heads when she makes a crossing." Question. "Did you make the last answer from a minute observation of the position of the boat, or your opinion of the way a boat would head in crossing?" Answer. "I stated, because I saw the boat crossing over; cannot form any idea of the number of points she varied from her direction up the west bank. I am not a pilot, and never studied the compass; cannot say how many angles she varied from her direction up the west bank, as I know nothing about angles." Being asked "if you know how many degrees makes a right angle." Answer. "I do not; am no scholar, and know nothing about angles or degrees." Question. "While standing on the guards observing the 'Ohio' after having tried the water, do you know that the 'Diana' kept her course directly down stream?" "To the best of my knowledge I think she did."—Being asked "if he has any knowledge on the subject," says, "If I had no knowledge I would not say anything about it; a man that has no knowledge has no business on a boat."

Re-examined.

"The 'Ohio' was coming up the west shore, because if she had been coming up the eastern shore she would have struck the bark first. The 'Diana' was descending in the middle of the river, as near as I could judge. A person in the 'Diana' could not possibly have been mistaken whether the 'Ohio' was on the east or west bank. I am confident that the 'Ohio,' when I first saw her, was running the western bank. She was still running the western bank when I stepped in to try the water—she still continued running the same direction. When I went in to try the water, I had no apprehension that a collision would take place, not in the least."

Cross-examination by consent.

"Have no idea how far the 'Ohio' was running from the western shore. The tow-boats generally run close to shore; those large vessels do not generally run so close."

(Signed,) JACKSON MCFARLAND.

Sworn to and subscribed at New Orleans,
District aforesaid, this 27th day of
April, A. D., 1850, before me.

(Signed,) CHARLES A. KELLOGG,
U. S. Commissioner.

JOHN M. MAY, having been duly sworn, deposes:

"I am pilot at the S. W. Pass, and also at the Balize. Was on board the 'Diana' on the morning of the collision with the 'Ohio;' was on board the 'Diana' as passenger to the S. W. Pass. Cannot tell exactly the hour in the morning at which the collision occurred, for I was in bed. Heard the crash, and came on deck in a great hurry I met Captain Steele coming through the cabin and running aft just as I came out of my stateroom. I then went out on the after part of the deck, and saw the 'Ohio' laying astern of us, a little on our starboard quarter. I returned to the cabin and took my watch and coat. Previous to returning to the cabin, I hollowed to the 'Ohio' to 'go ahead.' When I came out on deck again, after getting my watch and coat, there was about six inches of water on the cabin floor. I then tried to get something to save myself on, but found nothing. I proceeded again to the roof of the cabin, and hollowed again to the 'Ohio' to come ahead. After awhile she came ahead on our starboard quarter up to our starboard wheelhouse, when they heaved some ropes overboard, and I got hold of one and got on board of the 'Ohio.' After we had been aboard the 'Ohio' some time, we got a boat lowered down and went back to the wreck. In the boat along with me was the pilot, and another man whom I cannot tell. We followed and drifted down with the wreck as far as the coal-yard. When I got on deck my senses were not collected, but as near as I can recollect, the 'Diana' was at the upper end of the flat, and, as near as I can judge, about two-thirds from the western shore. At this moment the 'Ohio' was laying astern of us on our starboard quarter. The 'Diana' after the collision headed up the river towards the east shore when I came on deck. Her head was turned up stream in consequence of the blow. The 'Ohio' struck the 'Diana' on the starboard bow, three or four feet forward of her boilers. I observed after the collision, the part of the boat that was injured. I am well acquainted with the pass, having been engaged there about five years; think that the map marked 'A' is a correct map of the pass, as far as my judgment will go" Question. "Supposing the 'Ohio' to have been coming up within 40 yards of the eastern shore, and three distinct orders given to 'port the helm,' where do you think she would have been?" Answer. "I should think she would have been pretty well into shore." The question being repeated, says, "she could have been to shore. It would not take two or three minutes for the 'Ohio' to go 40 yards. If the 'Ohio' had been going up within 40 yards of the eastern shore, it would have been impossible for the 'Diana' to have got inside of her.

If the 'Diana' had attempted to have gone inside of her, she would have been hard ashore before she would have been struck. If the 'Ohio' had been within 40 yards of the west shore, she would have been just about where I think she was when I first saw her; that if the collision had occurred within 40 yards of the eastern bank, the 'Diana' would have been about where I saw her, as the force of the blow would have driven her to that place. The 'Ohio' must have been either in the middle of the river or on the west shore when the collision happened. From the position of the boats, as I found them, I think I could make it perfectly plain on the map, to make any person understand it, on what side of the river the 'Ohio' was when she came up. I do not know of any more prominent points in the pass than those marked in the map 'A.' There is no point that cannot be seen over; the whole shore being a marsh with the exception of some clumps of woods. When I saw Capt. Steele coming through the cabin, he came from forwards, which is on a level with the cabin, and he had to come through the cabin to get aft. Question. "When you speak of the 'Ohio's' going 40 yards in two or three minutes, have you reflected whether you meant seconds or minutes? Being shown a calculation of the number of miles and yards a vessel would go in three minutes and 1½ minutes at the rate of ten miles an hour," answers, "it could not have taken many seconds to go 40 yards. I am not connected with or employed on tow-boats; am one of the branch pilots at the S. W. Pass."

Cross-examined.

Never traveled on the "Ohio," except the few minutes I was on board of her. I only know she steers well and answers readily, by hearsay. At the moment I first got on deck, I had not thought to look for land-marks; saw none, but saw them afterwards. I should think, from my judgment, that the pass there is about three-quarters of a mile wide, more or less; am not certain. (Signed,) JOHN M. MAY.

Sworn to and subscribed at New Orleans, District aforesaid, this 4th day of May, A. D., 1850, before me.
(Signed,) CHAS. A. KELLOGG,

JOSEPH H. CONKLING, having been duly sworn, deposes:

[The respondents reserve the objection to his competency.]

I was the captain of the "Stanton" on the voyage she commenced from New Orleans to California, when she came in collision with the "Ohio." The collision occurred a little after four o'clock in the morning; was not on watch at the time. The second mate and one man were on watch. I was in bed in the cabin at the time; was in a doze at the time of the collision; heard the watches relieved; heard the mate call the second mate a short time before. I jumped up immediately upon the collision occurring, and ran upon the upper deck. I sent the second mate down below to try the pumps. He informed me the vessel was sinking; that there was a large hole knocked into her. By this time the crew, firemen and all the men got on deck, and I gave the order to get the boats out. I sent the mate aft to lower down the stern boat to save a lady who was in the cabin.

We got the boats overboard, and part of us got into each boat. We divided ourselves as equally as possible. We shoved off from the vessel, and when we got a little way off, she turned over.

While we were getting the boats over, I looked at our position in the river to see the best place to get ashore. At this time the "Stanton's" head was well up the river; a long angle towards the eastern shore; think that we were rather nearer the eastern shore than the middle of the river, if there was any difference. I thought the best plan was to land on the eastern side. The small boat had a good deal of water in her, and it was a matter of consequence to land as soon as possible; was so much engaged before I left the "Stanton," in saving the lives, that I did not pay particular attention to the position of the "Ohio," but I could see the lights down below us, as I think, towards the eastern shore, and I should judge she had backed out from us. We were entirely clear of the "Diana," except her bow, which was cut off and hanging to us. We were lashed to the larboard side of the "Diana" in going down. The "Ohio" ran through the tow-boat and struck the "Stanton" on the starboard side. The force of the blow was so great that it cut through the bends of the "Stanton," and down three streaks of her copper; carried away the main mast, which was a new mast. She capsized a few minutes—should not think more than seven—after the collision. There was just time to get the boats over; she floated down then on her side. In the morning, about daylight, I got on board the tow-boat, and then saw the place where the "Stanton" was struck by the collision; got her into shore as soon as possible, and commenced wrecking, to save the sails and every thing else that could be saved from the wreck. I was not a part owner of the "Stanton," and in no manner interested in her, except as captain of her. (Signed,) JOS. H. CONKLING.

Sworn to and subscribed before
me, District aforesaid, this
4th day of May, A. D., 1850.

(Signed,) CHAS. A. KELLOGG,
U. S. Commissioner.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes & als.

EVIDENCE FOR RESPONDENTS.

Depositions of

R. L. Robertson, Richard Swain, and Peter Marcy.

Taken before admiralty Commissioner, on Friday, March 13th, 1857, in presence of

Proctors,
C. B. Singleton, Esq., for Respondents, and Libellant in *p. p.*
R. Mott, Esq., and second,
A. A. Fraser, Esq.

Exception.

Libellant, by his proctor, Robert Mott, Esq., excepts to the taking of this testimony on the ground alleged; that the order of submission, entered on the minutes of the Court, closed the case. (See minutes of Court, January 19th, 1857.)

R. L. Robertson, for Respondents, having been duly sworn, deposes:

I am a marine surveyor; have been engaged as such since 1829. I have seen the propeller "Col. Stanton," many times.

I find, from reference to my records, (objected to,) that she was docked here and repaired not long before she sailed hence from California. This record can be produced at any time before the Commissioner or the Court.

The note on my record was made at the time, and is the sole source of my present recollection of the fact stated therein. The record is true, so far as I knew at the time. The tonnage of the "Col. Stanton" was about 138 tons, per the Custom-house enrollment, seen by me.

I examined the vessel when she was in dock; I must have done so, or I could not have made a note of the repairs.

I don't think that the "Col. Stanton" was a suitable vessel to make a voyage around Cape Horn to California; she was not such a vessel as I should have selected for that purpose. Some vessels that are improper ones make very safe voyages; so that I cannot say whether the "Col. Stanton" could have made the voyage to California; the chances were rather against her.

I don't know whether an insurance could have been effected here on the "Col. Stanton;" don't know whether it was tried; I should have advised against it, particularly if she was loaded.

Having an engine and boiler in her, the "Col. Stanton's" value is difficult to estimate. As a sailing vessel I valued her, in good order, at $50 per ton. Her engine and machinery probably enhanced her value about $3,000, making her full value about $10,000; but I don't consider myself a good judge of the value of steam vessels; I should think $10,000 her outside value.

Cross-examined.

I am not now, nor have I ever been interested in any manner whatever, in the Independent Tow-Boat Company.

Cross-examined by Libellant.

I am a marine surveyor, employed by the underwriters; not now in the employ of any government. I am now employed by the "New Orleans Insurance Company," the "Home Mutual," and the "Sun Mutual Insurance Companies."

I don't know by whose authority I examined the "Col. Stanton;" I cannot now recollect. I go daily over to the docks and examine vessels. It is my business to get information on the condition and value of vessels.

I don't recollect whether I examined the "Col. Stanton" for the "Sun Mutual Insurance Company," with reference to insurance of her cargo on a trip hence to Chagres. I might have done so. I don't recollect having seen the "Col. Stanton" after she was loaded. There was no other surveyor then in the employ of the "Sun Mutual Insurance Company," and I don't recollect having made any report of the "Stanton" on the books of that office.

I am employed by the underwriters, but also make surveys for individuals when called upon.

I don't remember whether the libellant, Rutherford, (now speaking,) ever requested me to go on board and examine the "Col. Stanton." I don't know on what day I made the survey referred to. I can tell the date I entered the report of it on reference to my books. I don't know at whose request I made the survey.

I was employed fifteen years at sea; served a regular apprenticeship; never went round Cape Horn.

The size and the model of the "Col. Stanton" were what made me deem her unfit for a voyage to California. She was three to three and a half years old, I think.

I knew the steamship "McKim." She was sold by the Government, but I don't know whether she was sold at the same time as the "Stanton." I know that the "McKim" was dispatched hence for California, and that she got there. My brother was a passenger on her, and from him I learned that she was very near not getting there, and that she was eight or nine months getting there.

I know Messrs. Salter & Marcy, both. I would rely upon the certificate of both or either of them, as to the condition of a vessel. I have no doubt of their being good workmen in their profession as ship-builders and repairers. I would have no hesitation in believing any certificate of theirs as to the seaworthiness and safety of a vessel repaired by them.

Cross-examined by Proctor.

I don't believe that a vessel of the model of the "Col. Stanton" was a fit one for such a voyage to California. This is my reason for considering her unsafe for such a voyage.

She may have been fit for a voyage to Chagres.

Question.—From your examination of the note made by you of the "Col. Stanton" within the last few days, does your memory serve you as to any part of her condition at the time of the survey?

Answer.—It induces me to believe that the vessel was sound and in as good a condition as a vessel of that kind could be in.

(Signed,) RICHARD L. ROBERTSON.

Sworn to and subscribed at New Orleans, this 13th of March, 1857, before—

(Signed,) ROBERT M. LUSHER,
Adm'y Commissioner.

RIRHARD SWAIN, for respondents, having been duly sworn, deposes:

I am a marine surveyor, and have been so since 1839, all the time here in New Orleans.

I know the "Col. Stanton;" saw her while she was in dock repairing, and looked at her in my usual business way; did not examine her particularly. At the time she left here for California, I should consider her value between nine and ten thousand dollars. I did not think that she was a suitable vessel for a voyage hence to California. Her size and model rendered her unfit for it. She was too long in proportion to the breadth of her beam, as small propellers usually are.

I am employed by insurance companies in this city. In that capacity I should not have recommended her as a suitable vessel on which to take a risk hence to California. I don't think that she could have made the voyage to California with safety.

I was engaged in seafaring pursuits from 1814 to 1835, during which time I made two voyages round Cape Horn and back.

Cross-examined by Libellant.

I judge that the "Col. Stanton" was about four or between three and four years old. I don't know by whom she was built.

I knew her when she belonged to the Government of the United States. I think she was employed as a transport vessel hence to Vera Cruz during the war with Mexico.

I saw the "Col. Stanton" after she came out of dock, while she was loading here, on this side of the river.

I did not make any special examination after she came out of dock, with reference to insurance on her hull or cargo.

I should place implicit confidence in any report of Messrs. Salter & Marcy in reference to the repairs of a vessel or her fitness for marine services or seaworthiness in any respect, pertaining to their profession. (Signed,) RICHARD SWAIN.

Sworn to and subscribed at New Orleans, this 13th March, 1857, before—

(Signed,) ROBERT M. LUSHER,
Adm'y Commissioner.

PETER MARCY, for respondents, having been duly sworn, deposes:

I am a ship-carpenter and repairer of vessels.

The "Col. Stanton" was repaired at our dock the latter end of 1849 or beginning of 1850.

Sailing vessels of that kind could then be built new for from fifty to sixty dollars per ton. Her being a steam vessel probably enhanced her value. I consider that she was worth about $10,000 when she came out of dock. Her tonnage was between one hundred and twenty-five and one hundred and fifty tons. The price per ton of a vessel is given in reference to her Government towage.

Cross-examined by Libellant.

The "Stanton" was sound in every respect after she came out of dock; had been newly coppered. Her flatness and shallowness made her objectionable as a long voyage vessel. We put an extra keel on her to obviate in part the disadvantage of a flat bottom—make her hold up to the wind.

I have a recollection of a bill of $540 against the "Stanton" some time in 1848. We did not put a cabin in her; never did any joiner's work.

Cross-examined by Commissioner.

The amount of our bill for dockage and repairs to the "Stanton," in January, 1850, was $1841.85. We did not furnish the copper for coppering her; the labor of putting it on is included in the amount of bill above stated.

Cross-examined by Mr. Frazer.

In my estimate of the value of the "Col. Stanton" at $10,000, I included the value of the machinery. This I consider a fair valuation of her. I do not consider myself a perfect judge of the value of machinery.

Cross-examined by Libellant.

The "Stanton" had a cabin on deck, when she was in dock, the whole length of her. This cabin was put on, I remember, probably while she was in dock in 1848, but not by us.

(Signed,) PETER MARCY.

Sworn to and subscribed at New Orleans, District aforesaid, this 13th day of March, A. D., 1857, before me.

(Signed,) ROBT. M. LUSHER,
Ad'y Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD, owner of steam propeller "Colonel Stanton," and cargo. *vs.* J. & R. GEDDES, and others, of late Independent Tow-Boat Company, as owner of tow-boat "Diana."	Loss by collision with steamship "Ohio," 23d of January, 1850. Admiralty Commissioner's report and schedule of damages.

Filed March 16th, 1857.

To the Hon. T. H. McCaleb, Judge of said Court, &c.:

The undersigned Commissioner, to whom the above entitled cause was referred for an assessment of the damages sustained by the libellant, and recoverable from the owners of the tow-boat "Diana," has carefully examined and considered all the testimony adduced by the respective parties, and is satisfied that the total damages so sustained and recoverable, is $21,346.20, with 5 per cent. interest from the date of collision, as more fully set forth in the schedule of damages herewith submitted as part of this report.

1st. Touching the value of the vessel, the Commissioner should remark, that the testimony of Keyes & Conrey, adduced by the Libellant, appraises her at $27,000 and $24,000 respectively, while that of Marcy, Swain & Robertson, for respondents, fixes it as low as $10,000. The last mentioned witnesses testify much more clearly and satisfactorily than those for the libellant, in reference to their intrinsic worth of the vessel (from their experience as shipwright and hull inspectors,) but conforming to the general principle laid down by the Supreme Court in the recent cases of Williamson et al., *vs.* Barrett and al. (13 Howard, 111,) and schooner "Catharine," *vs.* Dickinson, et al., (17 Howard, 174.) The Commissioner does not feel at liberty to disregard the *data* furnished by libellant's witnesses, Keyes, Conrey and Pitfield, as to the *market value* of the "Col. Stanton" at the time of her loss, and he has therefore taken the average of the amount specified by the witnesses, as affording an approximate estimate of her true value.

2d. As to the value of the cargo and stores lost on the "Col. Stanton."

The prime cost of the cargo delivered on board at New Orleans, as explained by the manifest and the testimony of Cobb, Owen, Haines, Dudley, and others, is taken as the measure of damage in conformity to the settled doctrine of the Supreme Court, as laid down in Smith, *vs.* Condry, 1 Howard, 28:35, and in 3d Dallas, 333; also, 3d William Robinson, the "Columbus" and the "Clearance."

As to the whiskey on board there is no direct testimony, but the manifest shows *prima facie*, 110 kegs, and the account sales of R. B. Sykes, proves the sale of 32 kegs (345½ galls.) saved from the wreck, at 25 cts. The value of the bricks on board is based on the testimony of W. J. Dewey. The net amount realized by libellant from the sale of the remnants of the cargo and hull, (and deducted by the Commissioner from the total assessed value,) is proven by the testimony of R. B. Sykes, and J. S. Walton.

In support of the allegation in the 4th article of the libel, that the value of the cargo on board of the "Stanton," and of the freight realizable thereon, was $18,000, the libellant has also offered the testimony of various witnesses, as to the *value of the cargo at the port of destination*, and rates of freight, &c., assuming that as between the libellant and the present respondents, owners of the tow-boat "Diana," the loss arose in a cause *ex contractor*, and that therefore the value at the port of destination is the *true measure of the damage*.

On this point the Commissioner would merely suggest, that the obvious reason of the rule or measure of damage laid down in case *ex contractor* is, that the damaging party commits *a breach of his express obligation* with the party damaged. In the present case, the libellant's loss was undoubtedly incident to a trespass committed by the "Diana," the boat with which he had contracted for safe towage to the Gulf of Mexico; but, as the obligation of the tow-boat did not, and could not contain a guarantee of the safe arrival of the "Stanton" *at her port of destination*, the Commissioner is unable to perceive why any other measure of damage should be applied, than that which would have been invoked had the steamship "Ohio" been declared the trespasser.

On the total damages as assessed, the Commissioner has allowed 5 per ct. interest from the date of the loss, or "the time of the trespass," conformably to the rules laid down by Justice Story, in 9th Wheaton, 377, (the Apollon.)

Respectfully submitted.

(Signed,) ROBT. M. LUSHER,
Ad'y Commissioner.

NEW ORLEANS, 16th of March, 1857.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*
No 6935.
In admiralty.

C. M. RUTHERFORD, owner of steam propeller "Col. Stanton," and cargo, *vs.*

J. & R. GEDDES and others, of Independent Tow-Boat Co.—owner of tow-boat "Diana."

TOTAL LOSS, EX DELICTO,

By collision with steamship "Ohio," on the Mississippi River, January 23d, 1850, 4 P. M., 7 hours out from New Orleans, bound to California.

SCHEDULE OF DAMAGES,
Estimated as sustained by Libellants.

1st *Value*, at date of collision, of steam propeller "Col. Stanton," tackle, apparel, furniture, machinery, &c., average, say—	$16,200 00	$16,200 00
2d *Value*, at same time, of cargo, as per manifest and other proofs, viz:		
400 bbls. Mess Pork, at $9.25,	$3,700 00	
57 barrels, 87 tierces } Ham, 30,936 lbs., at 8½ cents,	2,629 56	
Expense of delivery on board,	46 88	
		6,376 44
25 boxes clear Pork and delivery, (¼th of a bill of Haines & Co.)		260 81
110 kegs Whiskey, about 1,187⅔ gals., at 24c.		285 04
1,000 Bricks, (as ballast,)		9 00
3d *Value* of stores and provisions,		698 71
Total value (at the time and place of loss) of vessel, cargo and stores,		$23,830 00

Total value (at the time and place of loss) of vessel, cargo and stores,			$23,830 00
Deduct proceeds of sale of remnants,	$5,214 66		
Less Auctioneer's Com. of 2½ pr. ct.	130 00		
		$5,083 80	
Less expense of saving by Union Tow-Boat Co.		2,600 00	
			2,483 80
Total damages sustained,			$21,346 20

Recoverable with 5 per cent. interest from January 23d, 1850, (date of loss.) (Signed,) ROBERT M. LUSHER,
Admiralty Commissioner.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Opposition to admiralty Commissioner's Report.

Proctors, { BENJAMIN, BRADFORD & FINNEY, and
C. B. SINGLETON.

Filed March 20th, 1857,

And opposition by J. S. WHITAKER.

Filed March 21st, 1857.

Now comes Benjamin, Bradford & Finney, and C. B. Singleton, proctors for John and Robert Geddes, Converse & Co., John O. Woodruff & Co., R. B. Sumner, Robert Murphy, McDowell & Peck, respondents herein, and oppose the report filed herein by R. M. Lusher, Commissioner, of the amount of damages occasioned by the collision with the steamship "Ohio," on the following grounds:

1st. The value, at date of collision, of the steam propeller "Col. Stanton," tackle, apparel and furniture, machinery, &c., as stated in said report, at $16,200, is excessive and not warranted by the evidence.

2d. That the allowance of interest upon the amount of damages, from the date of the collision, is not warranted by the laws of Louisiana.

Wherefore they pray that the report of the Commissioners be amended accordingly, and for all further aid and relief needful in the premises.

(Signed,) CHAS. B. SINGLETON,
(Signed,) BENJAMIN, BRADFORD & FINNEY,
Proctors.

In behalf of P. Deverges and Madam de St. Romes, libellants herein, I join in the foregoing opposition of J & R Geddes, Converse & Co., and others. (Signed,) J. S. WHITAKER,
Proctor.

U. S. DISTRICT COURT, *Eastern District of Louisiana.*

NO. 6935.

In admiralty.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and others.

Opposition to Commissioner's Report.

Proctors, { DURANT & HORNER,
For HUGHES, VALETTE & THOMAS.

Filed March 20th, 1857

To the Honorable THEO. H. MCCALEB, Judge of the District Court of the United States for the Eastern District of Louisiana:

Now, into this honorable Court by their proctors, come the libellants, Hughes, Vallette & Thomas, and reserving all their legal rights, and acting without any prejudice thereto, file this their opposition to the assessment of damages, made by R. M. Lusher, Esq., admiralty Commissioner, and deposited in Court the 16th of March, 1857, and for grounds of opposition, they say:

1st. That the estimate value, at the date of the collision, of the steam propeller "Col. Stanton," fixed by the Commissioner at $16,200, is more than the vessel was really worth, and that the said appraisement should be reduced to $10,000.

2d. That the Commissioner has erroneously solved the legal question of the liability of libellees for interest from date of loss.

3d. That the expense of saving by Union Tow-Boat Company is largely overcharged at $2,600, and should be reduced to $500.

Wherefore these appearers pray that these amendments be made to the said report, and for all further general and equitable relief. (Signed,) DURANT & HORNER,
FOR HUGHES, VALETTE & THOMAS.

U. S. District Court, *Eastern District of Louisiana.*

No. 6935.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes and als.

Libellant's opposition to admiralty Commissioner's report, filed 10½ A. M., March 21st, 1857.

Now comes the Libellant and opposes the report of the Commissioner, made in this case on the grounds following:

1st. Because the amount of damages allowed the libellant are too small.

2d. That the value of the "Col. Stanton" is not properly allowed in said report.

3d. That the value of the cargo is not properly allowed in said report.

4th. That the value of the freight is not properly allowed.

Wherefore libellant prays that the said report be amended, and that the amount claimed in his original and supplemental libel be allowed and decreed to him, and he will ever pray.

(Signed,) Mott & Fraser,
Proctors.

U. S. District Court, *Eastern District of Louisiana.*

Stated Session. 1857—February Term.

Saturday, March 21st, 1857.

Court met at 10 o'clock, A. M. Present, Hon. T. H. McCaleb.

In admiralty.

6935.	C. M. Rutherford, owner of propeller "Col. Stanton," *vs.* J. & R. Geddes, and others, and Robt. Murphy, and others of late Independent Tow-Boat Co., owner of tow-boat "Diana."	For assessment of Damages. The admiralty Commissioner's report and assessment

of damages having, at the hour of noon, pursuant to notice, been called to the attention of the Court, and both parties having filed exceptions thereto, it is ordered that the same be docketed, and the hearing thereof continued.

U. S. District Court, *Eastern District of Louisiana.*

Stated Sessions, 1857—May Term.
Thursday, June 4th, 1857.

Court met at 10 A. M.—Present, Hon. T. H. McCaleb.

In admiralty.

C. M. Rutherford,
owner of steam propeller
"Col. Stanton,"
6935. *vs.*
J. R. Geddes and al.,
of late Independent Tow-Boat Co.

Exceptions to assessment.

On motion of Messrs. Mott & Fraser, Proctors for the libellant, it is ordered that the exceptions to the admiralty Commissioner's assessment of damages herein be set down for hearing on Tuesday, the 9th inst., at 10 A. M., and that Respondent's Proctors be notified.

U. S. District Court, *Eastern District of Louisiana.*

Stated Sessions, 1857—May Term.
Tuesday, June 9th, 1857.

Court met at 10 A. M. Present, Hon. T. H. McCaleb.

In admiralty.

C. M. Rutherford,
vs.
J. & R. Geddes, and others,
of late Independent Tow-Boat Co.

Hearing and submission of exceptions to assessment.

The exceptions filed by libellant and by Respondents to the Commissioner's assessment of damages, having been called up, A. A. Fraser, Esq., appeared for the libellant, (excepting to the Commissioner's valuation of the "Col. Stanton" as too low,) and Messrs. E. A. Bradford and T. J. Durant, for Respondents, (excepting to same as too high, T. J. Durant, Esq., also opposing the allowance of $2,600 for saving remnants of cargo, &c., as excessive—the service not being a salvage service properly, and the rate being unusually high for freight.) The points raised in the exceptions were argued at length on both sides, and taken under advisement.

U. S. District Court, *Eastern District of Louisiana.*

Stated Sessions, 1857—May Term.

Saturday, June 13th, 1857.

Court met at 10 o'clock, A. M. Present, Hon. Theo. H. McCaleb.

In admiralty.

6935.
C. M. Rutherford, owner of Propeller "Col. Stanton,"
vs
J. & R. Geddes and others, of late Independent Tow-Boat Co. Owners of tow-boat "Diana."
Judgment on assessment of damages.

The Court having carefully considered the exceptions to the admiralty Commissioner's assessment of damages herein, and being satisfied that the proper valuation of the propeller "Col. Stanton," at the time of her loss, is $10,000, instead of $16,200, as reported, but that in other respects, the commissioner's assessment is correct. It is now ordered that said assessment be amended by deducting $6,200 from the reported value of the "Col. Stanton," and that, thus amended, the same be approved and confirmed, and a final decree drawn up and entered accordingly.

U. S. District Court, *Eastern District of Louisiana.*

Stated Sessions, 1857.—May Term.

Monday, June 15, 1857.

Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

In admiralty.

6935.
C. M. Rutherford, owner of steam Propeller "Col. Stanton" and cargo,
vs.
J. & R. Geddes and others, of former Independent Tow-Boat Co. (Owners of tow-boat "Diana.")
Final Decree.

The Court having heretofore, by its several orders of June 5th, 1854, April 9th, 1855, and January 19th, 1857, adjudged the law and the evidence in favor of the libellant's rights to recover the damages sustained by him in consequence of the sinking and loss of his property by the fault and improper management of the tow-boat "Diana," the property of the respondents, and having also, on the 13th instant, assessed the damages so sustained by him at $15,146.20, recoverable with five per cent. interest thereon from the date of the loss, to wit, January 23d, 1850: Now, therefore, it is ordered, adjudged and decreed, that against the respondents, John and Robert Geddes, Converse & Co., (represented herein by Wm. N. Converse,) John O. Woodruff & Co., (represented by John O. Woodruff,) Robert B. Sumner, Robert Murphy, McDowell & Peck, (composed of Robert McDowell and F. Peck,) B. Saulet, Dominique Lanata, Thomas Diamond, Hughes, Valette & Thomas, (composed of John Hughes, Francis Vallette and Mrs. Josephine Thomas, widow in community and natural tutrix of the minor children of Mark Thomas, the deceased partner of said firm,) Pierre Deverges and Madame J. C. De St. Romes, (appearing herein per Pierre Deverges, her agent and attorney in fact,) in solido, and jointly and severally, there be final judgment in favor of the libellant, C. M. Rutherford, for the full sum of fifteen thousand, one hundred and forty-six $\frac{20}{100}$ dollars damages, with five per cent. interest thereon from the 23d day of January, 1850, until paid, and costs of suit to be taxed by the clerk.

U. S. District Court, *Eastern District of Louisiana.*

Stated Sessions, 1857—May Term.

Saturday, June 20th, 1857.

In admiralty.

Court met at 10 A. M. Present, Hon. T. H. McCaleb.

6935. C. M. Rutherford, *vs.* J. & R. Geddes and als. } Respondent's Appeal.

On motion of E. A. Bradford, Esq., Proctor for and on behalf of the respondents herein, it is ordered that on the execution of bond in the sum of $35,000 by John and Robert Geddes and the other respondents against whom a final decree was rendered herein on the 15th instant, said respondents have and be allowed an appeal returnable to the next term of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana.

UNITED STATES OF AMERICA, *Eastern District of Louisiana.*

District Court of the United States.

In admiralty.

6935	C. M. RUTHERFORD, owner of Propeller "Col. Stanton" and cargo, *vs.* J. & R. GEDDES, and others of late Independent Tow-Boat Co., owner of tow-boat "Diana."	Appeal Bond, June 25th, 1857.

Know all men by these presents: That we, John & Robert Geddes, Converse & Co., John O. Woodruff & Co., R. R. Sumner, Robert Murphy, McDowell & Peck, Dominique Lanata, Hughes, Valette & P. Thomas, Madame J. C. de St. Romes, Pierre Deverges, as principals, and Oliver Palmes, as surety, are held and firmly bound unto the above named CALVIN M. RUTHERFORD, (as owner of propeller "Col. Stanton" and cargo,) libellant in the sum of thirty-five thousand dollars, to be paid to the said Calvin M. Rutherford, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans, the 25th day of June, in the year one thousand eight hundred and fifty-seven.

Whereas, the above named John & Robert Geddes, and others, respondents, have appealed to the next term of the Circuit Court of the United States for the fifth circuit and Eastern District of Louisiana, from a final decree of the District Court of the United States for said District, rendered on the fifteenth day of June, 1857, in the above entitled cause of

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

Signed, sealed, and delivered, the date aforesaid, in presence of
(Signed,)
Robert M. Lusher.
(Signed,)
Ernest Lagarde.

(Signed,)
Oliver Palmes.
Surety.

	John O. Woodruff & Co.	
(Signed,)	A. Moulton.	[SEAL.]
p. p.	R. R. Sumner.	
(Signed,)	A. Converse.	[SEAL.]
	J. & R. Geddes.	
(Signed,)	J. P. Abrams,	[SEAL.]
	McDowell & Peck.	
(Signed,)	R. McDowell.	[SEAL.]
	Hughes, Valette & Thomas.	
(Signed],	John Hughes.	[SEAL.]
pr. pro	Mad. de St. Romes.	
(Signed,)	P. Deverges.	[SEAL.]
	P. Deverges.	
(Signed,)	Converse & Co.	[SEAL.]
(Signed,)	Charles B. Singleton, *Proctor.*	[SEAL.]
	Robert Murphy.	
(Signed,)	Benjamin Bradford & Finney, *Proctors.*	[SEAL.]
(Signed,)	Dominique Lanata.	[SEAL.]

United States of America, *Eastern District of Louisiana.*

I, N. R. Jennings, Clerk of the District Court of the United States for the said District, hereby certify that the foregoing 376 pages manuscript contain and form a true transcript of the record of said Court, in the cause, in admiralty of

C. M. Rutherford, owner of propeller "Col. Stanton,"

vs.

J. & R. Geddes, and others, of late Independent Tow-Boat Co., owner of tow-boat "Diana"—Numbered 6935 on the Docket of said Court.

{ SEAL. } In testimony whereof, I hereto set my hand and affix the seal of said Court, at New Orleans, the 21st day of September, A. D., 1857, and 82d year of American independence.

N. R. Jennings,
Clerk.

By Robt. M. Lusher,
Dy. Clerk.

Submission of Cause on part of Libellant.

MINUTES—April Term, 1858.

New Orleans, Friday, June 4th, 1858.

Court met pursuant to adjournment.

Present, { Hon. J. A. CAMPBELL, Presiding Judge,
Hon. THEO. H. McCALEB, District Judge.

2822. C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.: } This cause is submitted on part of Libellant upon brief.

Submission of Cause on part of Claimant.

MINUTES—April Term, 1858.

New Orleans, Saturday, June 5th, A. D., 1858.

Court met pursuant to adjournment.

Present, { Hon. J. A. CAMPBELL, Presiding Judge,
Hon. THEO. H. McCALEB, District Judge.

2822. C. M. RUTHERFORD,
vs.
J. & R. GEDDES and AL. } This cause was argued by E. A. BRADFORD, Esq., on the part of Respondent, and submitted to the Court.

Deposition of R. F. LOPER *for Libellant.*

Taken 26th October, 1857.

UNITED STATES,
Eastern District of Pennsylvania, } *Sct.*

Be it remembered, That on the twenty-sixth day of October, A. D., 1857, personally appeared at my office, U. S. Court, No. 24, south 5th street, in the city of Philadelphia, before me, Charles F. Heazlitt, a Commissioner appointed by the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., Richard F. Loper, to testify, and the truth to say, on the part and behalf of the libellant, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States, for the Fifth Circuit, in and for the Eastern District of Louisiana, wherein Calvin M. Rutherford is the libellant, and J. & R. Geddes, Converse & Co., R. B. Sumner, John A. Woodruff & Co., Robert Murphy, McDowell & Peck, B. Saulet, D. Lanata, C. J. Meeker, Hughes, Valette & Thomas, Madame de St. Romes, and Pierre Deverges, defendants; and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify and say as follows, viz.:

I reside in the city of Philadelphia. I am engaged in the construction and building of steam and all other kinds of vessels; have been so engaged for the last twenty years. I built the propeller "Col. Stanton" for the Government; I built her as a lighter over Brazos bar in, I think, the year 1847. The Government contract price was, I believe, $15,000 for the hull, complete, engine and boilers, spars, sails, rigging and blocks, complete. She was a first class, well-built vessel; she was inspected by Major Bache and Major Tompkins, of the U. S. Army, and by them accepted on account of the Government. Those gentlemen pronounced her a well and faithful built vessel, and accepted her as such for the Government. She was finished; could have been sold for more money to private individuals, than the Government paid, it being war times, and labor and material high. I was paid by installments as the vessel progressed.

(Signed,) R. F. Loper.

Sworn to and subscribed October 26th, 1857. } (Signed,) Chas. F. Heazlitt.

United States,
Eastern District of Pennsylvania. }

I, Charles F. Heazlitt, a Commissioner appointed by the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit, under and by virtue of the Act of Congress, do hereby certify, that the reason for taking the foregoing deposition and the fact, is, that the witness resides at a greater distance than one hundred miles from the place where the trial of the said cause is to be tried, to wit, in the city of Philadelphia.

I further certify, that no notification of the time and place of taking said deposition was made out or served upon the said defendents, or either of them.

I further certify, that on the twenty-sixth day of October, A. D., 1857, I was attended by Isaac S. Sorrell, Esq., of counsel with the said libellant, and by the witness, who was of sound mind and lawful age; and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the depositions were by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said depositions in my possession for the purpose of transmitting the same by mail to the Court, for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said depositions and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and affixed my seal, this twenty-sixth day of October, A. D., 1857.

SEAL.

(Signed,) CHAS. F. HEAZLITT,
U. S. Commissioner.

Deposition of R. F. LOPER, for libellant, taken 27th May, 1858.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES, ET. ALS.
Plaintiff's Commission.
No. 2822.

Circuit Court of the United States, for the Fifth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

To any United States Commissioner residing in Philadelphia,
State of Pennsylvania:

Know ye, That reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, R. F. Loper, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in the said Court, wherein C. M. Rutherford is plaintiff, and J. & R. Geddes, et. als., appellants, are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this Court without delay, to be read in evidence on the trial of said cause, and send also this writ.

SEAL.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the City of New Orleans, this twenty-second (22d) day of April, Anno Domini, 1858, and the eighty-second year of the independence of the United States of America.

(Signed,) J. W. GURLEY, Clerk.
By A. LAVISSON, Dep. Clerk.

The execution of this commission appears in certain schedules hereto annexed to answers.

Philadelphia, Penn., May 27th, 1858.

(Signed,) CHAS. F. HEAZLITT.

Interrogatories.

C. M. RUTHERFORD, *vs.* J. & R. GEDDES, ET ALS. } In the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

Interrogatories to be propounded to R. F. Loper, who resides in Philadelphia, in the State of Pennsylvania, a material witness for libellant, on whose behalf he is to be examined:

1st. What is your age, residence and occupation?

2d. Did you or did you not build for the United States Government the steam propeller "Col. Stanton?" If yea, when, where and for what price?

3d. Was she or was she not a good steam vessel?

4th. Was she or was she not examined and accepted by the Government officials before you were paid for her?

5th. State all else you know that will benefit the libellant.

(Signed,) MOTT & FRASER, *Proctors.*

No cross-interrogatories.

(Signed,) BENJAMIN, BRADFORD & FINNEY.

Defendants reserve all legal exceptions, propound the following cross-interrogatories:

Defendants specially excepts to the 5th and last interrogatory, illegal and improper, and of such a nature as not to admit of proper cross-interrogatories.

1st. Was the contract for building said vessel in writing? If yea, you will annex the contract, or a true and correct copy.

2d. Have you annexed the original or true copy of said contract?

3d. When and where did you last see said vessel?

(Signed,) CHARLES B. SINGLETON,
Proctor for various parties.

No cross-interrogatories. (Signed,) J. L. WHITAKER.

(Signed,) DURANT & HORNER,
For Hughes, et. al.

Deposition of R. F. Loper, a witness for libellant, produced, sworn and examined on the twenty-seventh day of May, A. D., 1858, before Charles F. Heazlitt, U. S. Commissioner, at Philadelphia, under and by virtue of a certain commission issued out of the Circuit Court of the United States in and for the Eastern District of Louisiana, to any United States Commissioner residing in Philadelphia, State of Pennsylvania, directed in a certain case depending in said Court, wherein C. M. Rutherford is plaintiff and J. & R. Geddes, et. als., appellants, are defendants.

And the said R. F. Loper, being first duly and publicly sworn, saith, in answer to the first interrogatory:

I am aged fifty-five years; reside in the city of Philadelphia, and am by occupation a steamship, vessel and marine engine constructor.

To the second interrogatory he saith: I did build for the United States Government the steam propeller "Col. Stanton." I built her in 1847, at Philadelphia, Pennsylvania. The price of this vessel was $19,700.

To the third interrogatory he saith: The said propeller "Col. Stanton" was a good, staunch vessel. The materials were first class, and she was a first vessel for her size and purpose. She was built for a lighter over Brazos Bar.

To the fourth interrogatory he saith: The said propeller was examined by Government officials before I was paid for her. A commission consisting of Major Tompkins, U. S. Quarter-master, and Major Bache, of the Topographical Engineers, examined her. These gentlemen reported that the vessel was built in accordance with the contract, when I was paid and give up the contract.

To the fifth interrogatory he saith: The Government appointed a captain for the vessel before her frames were set up, to superintend her while she was being constructed. He examined all the materials she was constructed of, and all he objected to was not put in the vessel or used in her construction.

(Signed,) R. F. LOPER.

(Signed,) CHAS. F. HEAZLITT,
U. S. Commissioner.

To the first cross-interrogatory he saith: The contract for building said vessel, among others, was in writing. It was a contract for building six vessels. I cannot annex the said contract because it was surrendered to the Government when the vessels were delivered, nor can I annex a true and correct copy thereof, as I have none in my possession.

To the second cross-interrogatory he saith: I have not annexed the original or a true copy of said contract, for the reasons stated in my former answer.

To the third cross-interrogatory he saith: I last saw the said vessel, "Col. Stanton," in 1857, when she left Philadelphia, bound to Brazos, Santiago.

(Signed,) R. F. LOPER.

(Signed,) CHAS. F. HEAZLITT,
U. S. Commissioner.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

I, Charles F. Heazlitt, a U. S. Commissioner in and for the Eastern District of Pennsylvania, at Philadelphia, hereby certify that I was attended by R. F. Loper, the witness named in the commission hereto annexed, on the twenty-eighth day of May, 1858; that the said witness was of lawful age, and having been by me duly and publicly sworn in the cause named in the said commission, to make true answers to the interrogatories and cross-interrogatories in the annexed commission propounded, the same were then and there by me propounded to him, and the answer of the said witness to the said interrogatories and cross-interrogatories were then and there reduced to writing by me in the presence of the said witness, who subscribed the same in my presence; and having retained the said deposition in my possession till now, do herewith transmit the same by mail to the honorable Court.

{ SEAL. } Witness my hand and seal at Philadelphia, this twenty-seventh (27th) day of May, A. D., 1858.

(Signed,) Chas. F. Heazlitt,
U. S. Commissioner.

Deposition of G. Forbes, taken for libellant, 28th May, 1858.

C. M. Rutherford,
vs.
J. & R. Geddes, and als.
} Libellant's Commission.
No. 2822.

Circuit Court of the United States for the Fifth Judicial Circuit, holding sessions in and for Eastern District of Louisiana.

To R. M. Lusher, Esq., U. S. Commissioner:

Know ye, That reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, Gifford Forbes, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in the said Court, wherein C. M. Rutherford is plaintiff and J. & R. Geddes, et. al., are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this Court without delay, to be read in evidence on the trial of said cause, and send also this writ.

{ SEAL. } Witness, the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 26th day of May, Anno Domini, 1858, and the eighty-second year of the independence of the United States of America. (Signed,)

J. W. Gurley, *Clerk.*

(Endorsed.)

Executed May 28th, 1858, as shown by *proces verbal* and deposition herewith returned into Court.

(Signed,) Robert M. Lusher,
U. S. Commissioner.

Filed May 19th, 1858.

C. M. Rutherford, *vs.* J. & R. Geddes and als. } In the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

Interrogatories to be propounded to Gifford Forbes, to be examined on behalf of Libellant:

1st. Did you or did you not know the propeller "Col. Stanton?" If yea, when did you first know her?

2d. Did you or did you not know said vessel at the time she was sold by the United States after the war with Mexico? If yea, state her condition at the time; what kind of a vessel she was, the condition of her deck, machinery, cabin, &c.

3d. Who bought said vessel at the said sale? what amount was paid for her?

4th. Were or were not additions and improvements made to said vessel after she was so bought? If yea, state what they were, and the cost and outlay of them.

5th. Were or were not repairs and alterations made in said vessel after said purchase? If yea, state what they were.

6th. State the amount of the said alterations, improvements, repairs, &c., and how you know the amount of the same, and who paid the amounts?

7th. What was the said vessel worth when she was so completed?

8th. How much did she *stand* the *owners* in?

9th. Are you interested in the result of this suit?

(Signed,) Mott & Fraser,
Attorneys.

The claimants and defendants are notified to file their cross-interrogatories to the foregoing, within three days from the decree hereof, in default whereof a commission will issue and be executed without them. (Signed,) J. W. Gurley,
Clerk.

(Endorsed.)

Marshal's Return.

Received, May 19th, 1858, and on the same day served copies of the within interrogatories on Durant & Horner, by handing the same G. W. Hoffer, at the office of said Durant & Horner, being absent at the time, and on Singleton & Clack, by handing the same to F. H. Clack, one of the firm of Singleton & Clack, and on Benjamin, Bradford & Finney, by handing the same to R. W. Gurley, at the office of said Benjamin, Bradford & Finney, being absent at the time, and on J. G. Whitaker, by handing the same to John R. Bledson, said J. G. Whitaker being absent at the time, and on the same day I returned this writ into Court.

(Signed,) JAMES GILLAN,
Deputy U. S. Marshal.

Cross-interrogatories—Filed May 20th, 1858.

C. M. RUTHERFORD,
vs.
J. & R. GEDDES and ALS.
} In the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

Cross-interrogatories to be propounded to GIFFORD FORBES, a witness to be examined on behalf of libellants. The claimants, represented by the undersigned counsel, reserve all legal exceptions.

1st. Have you any interest in this suit?

2d. Were you ever employed on the propeller "Col. Stanton? If yea, in what capacity; when did you first go on board of her, and how long did you remain on said boat?

3d. If you were not employed on said boat, how did you happen to obtain your knowledge concerning her? Did you superintend the repairs? Where and when were the repairs made? Who made the repairs?

4th. How often were you on said boat? At what dates were you on said boat? Why did you visit said boat? what was your object in so doing?

(Signed,) CHAS. R. SINGLETON,
Of Counsel for sundry Claimants.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans, } *S. S.*

Be it remembered, That on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, before me, Robert Mills Lusher, a Commissioner, duly appointed on the 29th April, 1848, by the Circuit Court of the United States, in and for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the Acts of Congress, entitled, "an Act for the more convenient taking of affidavits and bail in civil causes, depending on the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled, "an Act in addition to an Act, entitled, 'an Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "an Act to establish the Judicial Courts of the United States," passed September 24th, 1789, and specially named in the annexed commission from said honorable Court, personally appeared Gifford Forbes, the person named in said commission, and a person of sound mind and lawful age, witness for the libellant in a civil suit, now depending in the Circuit Court of the United States, in and for the Eastern District of Louisiana, wherein C. M. Rutherford is libellant, appellee, and J. & R. Geddes and others, respondents, appellants, and the said Gifford Forbes, being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say in response to the several interrogatories and cross-interrogatories here annexed, and by me propounded to him, what is hereinafter in his own language set forth.

Gifford Forbes witness for Libellants.

Answer to first interrogatory. I did know the steam propeller "Col. Stanton" from about the month of September, 1848, up to the time of her loss by collision with the steamship "Ohio."

To second interrogatory. I did know her at the time she was sold by the United States after the war with Mexico. She was then a steam propeller with her boiler on the deck, her machinery in good order, bearing such repairs as are necessary after a boat has been run; her cabin very small and uncomfortable. Her hull was in good condition.

To third interrogatory. She was bought at said sale by T. & G. Forbes, (of which firm I was then a member,) C. M. Rutherford and J. M. Keys. Four thousand, five hundred dollars each was paid for her.

To fourth interrogatory. Very extensive additions and improvements were made to her after the purchase. The main deck was cut away and her boiler placed down in the hold, and a new cabin was put on her—an entirely new cabin—extending to the main gangway, and having a flush deck, above which, being intended for the accommodation and recreation of passengers, had to be constructed very carefully. In changing the position of the boiler from the deck to the lower hold, several pipes had to be cut, and various alterations made so as to adjust the machinery properly. Her cabin was fitted out anew with berths, mattresses, pillows and other cabin furniture, chairs, settees, &c. Berths were also erected between decks for two cabin passengers. The costs of and outlay for these various additions and improvements about the vessel, were between nine thousand, eight hundred, and ten thousand dollars.

To fifth interrogatory. Repairs and alterations were made after her purchase. I have already described them, as well as my memory serves me, in my answer to the fourth interrogatory.

To sixth interrogatory. As already stated, the additions, improvements, repairs and alterations made about her while I owned an interest in her, cost between $9,800 and $10,000. All the bills passed through the hands of our firm, (to whose business I attended principally,) and had to be approved by us. We (T. & G. Forbes) paid out a large portion of the amount, and C. M. Rutherford the balance on bills approved by us. I should add here that after we sold out our interest in the "Col. Stanton," other repairs and improvements were made about her to fit her for a voyage round the Cape to San Francisco, but I am unacquainted with the extent and cost of these repairs.

To seventh interrogatory. After the repairs, &c., made during our ownership of an interest in the "Stanton" were completed, she was worth, in my opinion, twenty-two or three thousand dollars. We had bought her at a price far below her real worth. I consider that she was worth at least $12,000 at the time of our purchase of her.

To eighth interrogatory. She stood us in about fourteen thousand four hundred dollars.

To ninth interrogatory. I am in no manner interested in the result of this suit. My interest in the "Col. Stanton" was settled up and extinguished in the latter part of the spring or the early part of the summer of 1849. (Signed,) GIFFORD FORBES.

(Signed,) ROBT. M. LUSHER,
U. S. Commissioner.

To first cross-interrogatory. I have no interest whatever in this suit.

To second cross-interrogatory. I never was employed on the "Col. Stanton."

To third cross-interrogatory. I was one of her owners, and particularly interested in knowing all about her. The repairs were made under the immediate supervision of the captain, (Wight,) but were almost daily inspected also by myself. The repairs were made at a ship-yard in Algiers during November or December, 1848, and January, 1849, as well as I can recollect. The repairs were made by John Hughes and his associates, and one Girard, the latter attending to the blacksmithing.

To fourth cross-interrogatory. I was on the boat daily; sometimes twice a day. I cannot specify the dates, but it was during the repairs. I visited her because of my interest in the rapid and proper completion of her repairs, and my object was to get her to sea as soon as possible. (Signed,) GIFFORD FORBES.

(Signed,) ROBERT M. LUSHER,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Fifth Circuit and Eastern District of Louisiana,
City of New Orleans. } *S. S.*

I, Robert M. Lusher, Commissioner, duly appointed as aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that I was duly authorized and required so to do by the annexed commission from the Honorable, the U. S. Circuit Court for said District, sitting at New Orleans, the place of trial of the cause for and in which said deposition is taken and is necessary.

I further certify, That, on this 28th day of May, A. D., 1858, I was attended in my office, at 5½ P. M., by the witness, Gifford Forbes, who is of sound mind and lawful age, and the said witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition herein appearing, was by me reduced to writing, in the presence of the witness, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand to the Court for which the same is taken.

I further certify, That I am not of counsel or attorney to any of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

{ SEAL. } In testimony whereof, I have hereunto set my hand and seal, at New Orleans, this 28th day of May, A. D., one-thousand eight hundred and fifty-eight.

(Signed,) ROBT. M. LUSHER,
U. S. Commissioner, in and for the Eastern
District of Louisiana.

Opinion of the Court—filed 16*th of November,* 1858.

CALVIN M. RUTHERFORD,
vs.
J. & R. GEDDES,
CONVERSE & CO.,
R. B. SUMNER, ET. AL.
} Circuit Court of the United States, Eastern District of Louisiana.

The libellant (Rutherford,) brought his libel in the District Court against the defendants as members of a commercial partnership existing in New Orleans, under the name of the Independent Tow-Boat Co., which was concerned in the towage of vessels, and the transportation of passengers and freight on the Mississippi river. He alleges, that in

January, 1850, he engaged them to tow from New Orleans to the Gulf of Mexico, on that river, a steam propeller called the "Col. Stanton," laden with merchandise and bound to San Francisco, of which he was the owner, and placed the said vessel under the officers and servants of the Company. He complains that they conducted themselves so negligently and unskillfully in the attempt to perform this contract, that the propeller in consequence was sunk in a collision with another vessel, (the steamship "Ohio,") and the said propeller and her cargo became a total loss. He claims compensation in damages from these defendants.

The defendants answer the libel, and deny that they belong to any commercial firm such as is described by the libellant. But they say, that in May, 1848, they established under the law of the State of Louisiana, entitled, "An act to authorize limited or anonymous partnerships and to regulate the same," approved 13th of March, 1837, the limited partnership or Company known by the name of the Independent Tow-Boat Company. That by the provisions of the law, and of their notarial and authentic act of association, the liability and responsibility of the members of said Company, was limited and restrained to the amount of the capital stock subscribed for and held in the said association.

That the enterprise of the Company had failed; that the stock of the Company was worth nothing, and its affairs wholly insolvent. The defendants deny all knowledge of the facts relative to the ownership and equipment of the "Colonel Stanton;" of her voyage down the Mississippi river under the charge of the tow-boat "Diana," the boat of the Company; of the collision with the ascending steamer, "Ohio," and the origin and circumstances of that collision, or of its consequences to the libellant, and deny their liability to make any compensation to him on account of their connection with the Independent Tow-Boat Company. There can be no doubt that the liability of the members of the Tow-Boat Company is dependent upon their articles of association in connection with the law of the State which permitted such associations. The seat of the partnership was in Louisiana. Their contract with the libellant was made and was to be performed there. The first section of the Act of the 13th March, 1837, provides, "That from and after the promulgation of this Act, it shall be lawful for any number of persons to join, and from among themselves and those who shall be willing to become subscribers thereto, any company or partnership for the purpose of carrying on manufacturing, farming or any other branch of industry, or of making roads or canals, or of making insurances of any kind, provided that no such company shall be authorized to embrace at the same time more than one branch of business" The sixth section of the Act prescribes, "That it shall not be lawful for any of the companies or partnerships authorized by this Act, to do any banking business of any kinds mercantile business of any kind, commission business of any kind."

The object of the associated Independent Tow-Boat Company, as declared in their articles, is "The towing of vessels by steam power in and out to sea, and up and down the Mississippi river, and the transporting freight and passengers in like manner, also lightering and wrecking vessels in said river or at sea, or both; carrying passengers and freight in any port of the Gulf of Mexico and elsewhere at sea, together with the purchasing and building of such steam vessels as may in any manner be required by or for the use of the said Company." The capital of the Company was fixed at one hundred and twenty-five thousand dollars. A manager and a board of directors were constituted to control its affairs, and the locality of the associates was specially limited.

This Company entered upon so much of the business designated in their articles as is connected with transportation and towage on the Mississippi river.

The question was dismissed at the hearing of this cause, whether the partnership was authorized by the Act of 1837. I shall not place my decision of this cause entirely upon the construction of this Act, there being another question in the cause which is, I think, decisive of it, and which seems to arise in advance of this. After the disaster to the "Col. Stanton" and the tow-boat "Diana," in 1850, the owners respectively libelled the "Ohio" in the District Court, and charged her with being the occasion of their miscarriage.

These suits came on for a hearing in the District Court, and on appeal in the Circuit Court; and on the hearing in the latter, the libels were dismissed and the "Ohio" exonerated. Upon the hearing of this cause in the District Court, the libellant, to prove the circumstances of the collision and the fault of the officers of the tow-boat, offered the depositions that had been taken on behalf of the "Ohio" in those two suits, and claimed to read them. The evidence was objected to as incompetent, and was admitted by the Court. This proves nearly all the testimony on behalf of the libellants. Depositions taken in one cause may sometimes be used as evidence in another, but it is only under special and particular circumstances. In every case such evidence is regarded as secondary evidence, and its introduction must be preceded by proof to show that the primary evidence could not be procured. It is a general rule that evidence which a witness has given on a trial between parties, is admissible upon the same subject matter between the same parties on a subsequent trial, if the witness has died in the interim;

or if he has gone abroad and has not returned. It is in general essential that the party to be affected by the evidence of depositions, or some person in privity with him, should have had an opportunity of cross-examining the witnesses with reference to the subject matter. The rule of the common law is, that no evidence shall be admitted but what is, or might be under the examination of both parties.

2 PHIL.: EV. 88.

It is to be observed that no evidence was given to show that any of these witnesses were dead, or that there was any indictment to their examination in this case. In the case of Rutherford *vs.* the steamship "Ohio," the defendents were not parties, and had no power to examine in that particular case; and in the case of the Tow-Boat Company *vs.* the "Ohio," the libellant was no party, and the defendants, though interested in that suit as members of the Company, yet were so in a different character from that in which they are parties here.

But the rule is well established that the cause in which the depositions were taken, must be between the same parties or persons, claiming in privity with them, to authorize their admission in another suit; and that the right to use them must be reciprocal, or neither can claim it. It cannot be inserted that the depositions in the case of the Tow-Boat Company against the "Ohio" may be used against the libellant in this cause. In Goodenough *vs.* Alway—2 Sim. & Str., 481, Sir John Leach refused an order to allow depositions in a suit for tithes to be read in a tithe suit against other occupiers of land in the same parish, though the objects of both suits, and the interests of the parties were the same.

In Cazenave *vs.* Vaughan 1, M. &. Sel., 4, Lord Ellenborough said, "The rule of the common law is, that no evidence shall be admitted but what is or might be under the examination of both parties." This precise question arose in the case of Rushworth *vs.* the Countess of Pembroke & Cuner, Hard 472, where the defendent sought to introduce the depositions taken in a cause to which she was not a party. The Court was of opinion—"That the former depositions could not be used, because the Countess was not a party to that suit; and as they could not be read against her—no more could they be read for her; and because she was not bound by them, not having been a party to the suit; nor was she in a capacity of examining any witness in it, or preferring interrogatories in it; for that reason, also, she could not make use of the depositions of any that had been witness to it." The American cases go to the length of those that I have cited. Harrington *vs.* Harrington, 2 How. Misso., R. 701, 4 Wash., C. C. R., 186, 11 B., Mon. 278, 2 Hill, N. Y., R. 538.

In the case last cited testimony delivered in another cause by a witness called by one of the parties, and when that party was present and expressed no dissent to the statements, was held to be inadmissible. My conclusion is, that all the depositions taken in the cases before mentioned, and used as evidence in this by the libellant against the objections of the defendants, were improperly admitted, and that the exception of the defendants was well taken. The only evidence introduced by the libellant to show the unskillfulness and violation of the rules of navigation on the part of the "Diana," besides that which is now rejected, is that of the Captain and pilot of the "Ohio." The Captain was not on deck until after the collision had taken place, and the vessels separated, and the pilot is a witness too much interested in the issue of the suit, and he labors under too many influences that are calculated to affect his candor to justify a decree upon his unsupported evidence.

The evidence introduced by the defendants was read without exception, and I am obliged to receive it as if it had been taken regularly. This evidence weakens the force of the unsupported testimony of the pilot, and scarcely leaves me ground for any action in the cause favorable to the libellant. It is proper, however, that the opinion of the Court upon the other defence should be declared, in order that the cause may be disposed of upon its merits, and not upon an adventitious defect in the manner of taking the testimony. The act of the Legislature of Louisiana of 1837, introduced into that state the "anonymous partnership" of the French commercial code, a partnership designated by its object, managed by agents or directors, and whose associates were liable only to the extent of the interest, or number of stores in the firm. The act prohibited such partnership to be formed for the management of "banking," "mercantile," or "commission business of any kind." It is evident that the word "mercantile" in this act, is not a synonyme of "commercial" in the chapter of the civil code upon commercial partnerships—c. c. art.,—2795-6. The Supreme Court of Louisiana have decided, that partnerships for banking, for buying and selling merchandise or manufactures, and for the transaction of commission business, in various forms, as well as for transportation, are commercial partnerships.

English, *vs.* Wall, 12 Rob. 132-14 Lous. R., 287-243. 3 Rob. 130. 11 Mart. 331-8. Mart. ~~U. S.~~ 390.

Some of our laws, says "Pordessus," employ the words commercants, negociants or marchands, indiscriminately, to designate persons whose habitual profession it is to be concerned in commerce. Nevertheless, by a sort of inaccuracy that is sometimes observable in the most exact minds, the words commercants, negociants, marchands, are occasionally employed together or apart, as if they had distinct meanings. 1 Pord. com. dro., 80.

Gouget & Merger, in their Dictionary of commercial law, say, "that the word 'commercant' is generic, and is applicable to all who are engaged in commerce." They distinguish, however, bankers who deal in exchange, money, and credit; merchants who buy and sell either by wholesale or retail; manufacturers or constructors who sell under another form materials that they have purchased or changed—the substance of those which have been confided to them with that intention; ship-masters, usurers, commission merchants, brokers, exchange agents, as distinct classes, belonging to the general profession. Gouget & Merger, Dic. de droit com., to 2-129, s. 12.

In the "American Cyclopedia of Commerce" a merchant is described as "one who buys and sells commodities in gross, or deals in exchanges, or one who traffics in the way of commerce either by importation or exportation."—Cyclopedia of Commerce, 1346. And such in the English bankrupt law, those who use the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail, are distinguished as a separate class from insurers. Warehousemen, wharfingers, shipwrights, bankers, brokers, &c., &c.—1 Bac. ab., 525.

The bankrupt Act of the United States subjected to involuntary bankruptcy a merchant or person actually using the trade of merchandise, or being a retailer of merchandise, and bankers, factors, brokers, underwriters and marine insurers.

The Civil Code of Louisiana, in several provisions, employs the word merchant in its limited sense, in which it is employed in the foregoing citations:

Thus, a married woman is considered as a public merchant if she carries on a separate trade, but not if she retails only the merchandise belonging to the commerce carried on by her husband.

☞ C. C., 128, 2244, 3175, 3176, 3177—

An Act providing for the organization of private corporations, passed in 1855, reflects much light upon the subject under consideration. That Act authorizes any number of persons, not less than six, to provide for the construction, working and maintainance of railroads, canals, bridges, ferries, and other works of improvement; to effect insurance of every kind; to carry on manufactures—cotton, woolen, silk, hemp, &c., &c.; to erect foundries, marine or dry docks, gas and water works; to compress cotton, to manufacture iron, copper, lead, machinery, gunpowder and agricultural implements; to construct and maintain docks, *steamships for the transportation of freight and passengers; and generally all works of public utility and advantage*, with the condition that "no corporation shall engage in agricultural or MERCANTILE BUSINESS, nor in commission, brokerage, stockjobbing, exchange or banking business of any kind."

The business transacted by the Independent Tow-Boat Company was principally that of towing vessels on the Mississippi river. There is evidence that occasionally they transported passengers, and took money for freight, but this does not seem to have formed a material part of their business. I cannot come to the conclusion that this business was a mercantile business, within the purview of the Act of 1837. The term mercantile was not used in the sense of commercial, or of trading, but in its limited sense of buying and selling, and the interchange of commodities, for money or upon barter. The general words in the first section of the Act of 1837, are elucidated by the limitation imposed upon them in the 6th section. All legitimate branches of industry "are comprised within the Act, except those which are specifically excluded by the 6th section.

I have examined, with much care, both branches of this case from the particular circumstances under which it has been presented.

My conclusion is, that the libel cannot be sustained, and the decree of the District Court is reversed, and the libel dismissed.

J. A. CAMPBELL,
Asso. Just. Supreme Court of the United States.

CIRCUIT COURT OF THE UNITED STATES,

Fifth Circuit, and Eastern District of Louisiana.

November Term, 1858.

New Orleans, Wednesday, November 17th, 1858.

Court met pursuant to adjournment.

Present, Hon. THEO. H. MCCALEB, District Judge.
Absent, Hon. J. A. CAMPBELL, Presiding Judge.

2822.	C. M. RUTHERFORD, *vs.* J. & R. GEDDES & AL.	The following decree was received from Hon. J. A. CAMPBELL, Presiding Judge, and ordered to be recorded.

This cause came on to be heard at the last Term of the Court, upon the transcript of the record from the District Court of the United States, for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof it is now ordered, adjudged and decreed, that the decree of the District Court be reversed, and that the libel be dismissed with costs.

Judgment entered 17th November, 1858.

(Signed,) J. A. CAMPBELL,
Asso. Just. Supreme Court of United States.

PETITION AND ORDER OF APPEAL, FILED 20TH JUNE, 1859.

To the Honorable the Circuit Court
for the Eastern District of Louisiana:

The petition of C. M. Rutherford respectfully shows, That on the 17th day of November, 1858, a final judgment was rendered against him in the suit of C. M. Rutherford *vs.* J. & R. Geddes, et. al., No. 2822, on the docket of this Court; that he is informed and believes that there is error to his prejudice in said judgment, and that he is desirous of taking an appeal therefrom.

Wherefore petitioners pray that an appeal be allowed him in this case, and returnable to the next term of the Supreme Court, on his furnishing bond conditioned according to law, with security in such sum as may be fixed by the Court.

(Signed,) MOTT & FRASER, *Attorneys.*

ORDER.

Let the appeal be allowed, as prayed for, on appellants giving bond with good and solvent security in the sum of five hundred dollars, conditioned according to law.

June 14th, 1859. (Signed,) THEO. H. MCCALEB.
U. S. Judge.

APPEAL BOND, FILED 20TH JUNE, 1859.

Know all men by these presents, That we, C. M. Rutherford, as principal, and Shepard Brown, as surety, are held and firmly bound, jointly and severally, unto J. & R. Geddes, et. al., in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said J. & R. Geddes, et. al., their heirs, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the twentieth day of June, in the year of our Lord eighteen hundred and fifty-nine.

Whereas, C. M. Rutherford has this day presented a petition to the honorable the Circuit Court of the United States for the Fifth Circuit, holding sessions in and for the Eastern District of Louisiana, praying for an appeal from a judgment in a suit wherein C. M. Rutherford is plaintiff, and J. & R. Geddes, et. al., are defendants.

Now the condition of the above obligation is, that we, the above bounden C. M. Rutherford and Shepard Brown, will well and truly pay to the said J. & R. Geddes, et. al., the defendants in said cause, all such damages as they may recover against us in case it shall be decided that the said appeal was wrongfully obtained. (Signed,) C. M. RUTHERFORD, [SEAL.]
(Signed,) SHEPARD BROWN, [SEAL.]

Signed, sealed and delivered in the presence of
J. G. MADY.

Approved,
(Signed,) THEO. H. MCCALEB,
U. S. Judge.

APPEAL BOND.

(*Affidavit endorsed on Bond.*)

Shepard Brown, surety on the within bond, having been duly sworn, says he is worth the sum of five hundred dollars, over and above all his debts and liabilities.

Sworn to and subscribed before me,
June 2d, 1859. (Signed,)
C. M. BRADFORD, J. P.

(Signed,)
SHEPARD BROWN.

CIRCUIT COURT OF THE UNITED STATES,

Fifth Circuit and Eastern District of Louisiana—Clerk's Office:

I certify that the foregoing two hundred and ninety-nine pages of manuscript contain and form a full, true, complete and perfect transcript of the record and proceedings had, together with all the evidence adduced in the case of Calvin M. Rutherford *vs.* J. & R. Geddes and al., No. 2822 of the docket of said Court.

{ SEAL. } Witness my hand and the seal of said Court, at New Orleans, this 11th November, 1859.

J. W. GURLEY, *Clerk.*

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Supreme Court of the United States.

CALVIN M. RUTHERFORD, Appellant,

VERSUS

J. & R. GEDDES, et al., Appellees,

IN ADMIRALTY.

BRIEF FOR APPELLEES.

Commercial Bulletin print., 114 Poydras and 35 Front Levee streets.

Supreme Court of the United States.

CALVIN M. RUTHERFORD, Appellant,

VERSUS

J. & R. GEDDES, et al., Appellees,

IN ADMIRALTY.

BRIEF FOR APPELLEES.

This is an appeal from a decree in admiralty rendered by the Circuit Court of the United States for the Eastern District of Louisiana.

The appellant, Rutherford, was in January, 1850, the owner of a steam propeller, named the "Col. Stanton," of about 150 tons burden. He had loaded her in New Orleans with a cargo of pork, bacon, other provisions and sundries, also his property. He intended to send her to San Francisco by sail, as far as Rio Janerio, where she was to take in coal for the remainder of the voyage. On the 22d of January, 1850, the libellant put the Col. Stanton in charge of the towboat "Diana," which was to tow her to sea from the port of New Orleans. The Diana proceeded down the Mississippi, with her tow, the Col. Stanton, attached to her starboard side, and at about 20 minutes past 4 o'clock of the morning of the 23d of January, a collision took place between the Diana and the steamship Ohio, coming up the river. The Stanton was struck and sunk in deep water with her entire cargo, of which but an inconsiderable portion was saved by wreckers. The Diana was also greatly injured.

The towboat Diana was the property of a company named "Independent Towboat Company." created by a notarial act passed at Now Orleans, on the 8th of April, 1848, under an act of the Legislature of the State of Louisiana, approved on the 13th of March, 1837, and entitled "An Act to authorize limited or anonymous partnerships, and to regulate the same." This notarial instrument is found on p. 29 of the Record.

Immediately after these events, to wit: on the 28th of January, 1850, (p. 39,) Rutherford, as owner of the "Col. Stanton" and her cargo, and the Independent Towboat Company, as owner of the towboat Diana, brought suit against the steamship Ohio, to recover damages for the losses sustained by them through the above mentioned collision, in the District Court of the United States for the Eastern District of Louisiana. Much testimony was taken in these cases, but the libellants in both of them failed to recover judgment, and the Ohio was exonerated in both cases. Much later, to wit: on the 12th of April, 1854, Rutherford resolved to try his fortune in this suit, which he institutued in the same Court against the Independent Towboat Company, gainsaying all his allegations in his libel against the Ohio, (p. 139,) in which he had charged the loss upon the Ohio, and now asserted that it had been caused by the mismanagement of the towboat Diana. He did indeed not sue the Independent Towboat Company eo ~~co~~ nomine~~e~~, but declared that the towboat Diana belonged to a *commercial* partnership, bearing the name of the Independent Towboat Company, all the members of which were responsible jointly and severally for its liabilities, and he first sued four of the parties, (p. 10,) and afterwards, (p. 19,) the remaining parties to the deed or act, by which this limited partnership had been created, (29.)

When this case was at issue, the libellant offered in evidence the depositions of the master of the steamship Ohio and of the river pilot, which testimony was taken in this case, and clearly admissible so far as newly given. (pp. 45 and 50.) But he also offered as his principal testimony, the depositions taken *on behalf* of the *steamship Ohio*, in 1850, in the two suits of the libellant Rutherford and the Independent Towboat Company against the steamship Ohio. This is the testimony by the weight of which the District Court decided these two cases in favor of the steamship Ohio. This testimony was objected to by the present respondents, (p. 45,) on the ground "that the respondents were not parties to the suit between the libellant Rutherford and the steamship Ohio, and that the libellant herein was not a party to the suit between the Independent Towboat Company and the steamship Ohio." Notwithstanding these objections, this testimony was received by the District Court, but rejected by the Circuit Court. (183.)

The libellant then offered much testimony to establish the value of the cargo of the Col. Stanton, which it is supposed need not be mentioned now..

The respondents then offered in evidence the testimony taken by the *libellants*, in the cases of Rutherford and the steamship Ohio, and the Independent Towboat Company and the steamship Ohio, in 1850, which throws the blame of the collision upon the steamship Ohio, (141, 145.) In regard to this testimony, the Circuit Judge says, (p. 185, "The evidence introduced by the defendants was read without exception, and I am obliged to receive it as if it had been taken regularly." This evidence of the respondents is found at pp. 141 to 155. It is strengthened by other evidence found at pp. 156 to 159. But if all this evidence was disregarded, there would remain for the plaintiff, after the deduction of so much of his evidence of 1850, as was excluded, only the evidence of the Captain of the Ohio, (47,) who declares himself that he did not see the collision, and of the pilot Kinney, (56,) who when he was examined, in 1856, recollected very little of the transaction, but only referred to the testimony given by him in the suit against the Ohio, in 1850, which testimony, though annexed to his deposition was ~~ac~~Excepted to by the respondents, (p. 45.) On this only received legal testimony, the opinion of the Circuit Court is thus plainly expressed, (p, 185.)

"The only evidence introduced by the libellant, to show the unskilfullness and violation of the rules of navigation on the part of the Diana, besides that now

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rejected, is that of the captain and pilot of the Diana. The captain was not on deck until after the collision had taken place, and the vessels separated, and the pilot is a witness too much interested in the issue of the suit, and he labors under too many influences, that are calculated to affect his candor, to justify a decree upon his unsupported testimony."

And yet the voluntarily admitted testimony, offered on the part of the respondents, which had been taken in the case of the Independent Towboat Company, and which had originally been taken to repel the defence of the steamship Ohio, cannot be disregarded, (141.) It contradicts all the statements of the captain and the pilot of the Ohio.

Under these circumstances the Circuit Court held, that the libellant Rutherford had failed to prove that the loss of the Col. Stanton had been caused by the unskilful management of the towboat Diana, and that the libel must be dismissed.

The only question of law presented by this aspect of the case, is whether the testimony originally taken in 1850, on behalf of the steamship Ohio, to show that the collision was attributable to the bad management of the Diana, was properly excluded in the present suit.

"In all cases at law when a deposition is offered as secondary evidence, that is, as a substitute for the testimony of the witness *viva voce*, it must appear that the witness cannot be personally procured." 1 Greenleaf, § 555.

Depositions received in another suit are admissible, if the matters in issue were the same in both cases, and the party against whom it is offered had full power to cross-examine the witness. 3 Greenleaf, § 553. See also, 1 Phil. evi., 230, and Cowen & Hill to 2 Phil., 572, where it is said that the cases all agree that the parties must be the same, the issue must be the same, and an opportunity must have been given for cross-examination. *Ibid.*

The cases cited in the opinion of the Court are conclusive to the same effect, (184.)

In this case no effort was made to procure the attendance or direct testimony of the witnesses, and it was not shown that they were either dead or absent.

The Circuit Court also examined this case under another aspect, which led to the same conclusion, that the libel must be dismissed. The libel charged the respondents with being responsible, jointly and severally, for the liabilities of the Independent Towboat Company, which he styled a *commercial* partnership.

The act of incorporation of the Independent Towboat Company was passed before a notary public, at New Orleans, in April, 1848. (29). Numerous persons appeared before the notary, and declared that they desired to form "an anonymous partnership under the Act of the Legislature of the State of Louisiana, approved on the 13th of March, 1837, entitled "An Act to authorize limited or anonymous partnerships, and to regulate the same."—Bullard's Dig., 632. This declaration of the subscribers, and the very title of the law under which

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they acted, show that they intended to limit their liabilitiy to the amount subscribed for by each of them. The 8th section of this act provides "that no individual partner or stockholder in any of the companies or partnerships contemplated herein, shall in any manner be liable over and above the amount of stock at par value which they shall hold in any of the said companies or partnerships for the debts and obligations of the same."

The Independent Towboat Company was unsuccessful in its buisness—its whole capital was sunk and it had become insolvent. The libellant being then unable to enforce a claim against the Independent Towboat Company, bethought himself of an expedient, and now contends, that while the subscribers had intended to form a limited partnership, they had really by some mistake, formed themselves into a commercial partnership, which rendered them liable individually, and jointly, and severally, for all the debts of the company.

The libellant bases this claim upon the 5th section of the act of the legislature in question, which provides "that it shall not be lawlul for any of the companies or partnerships authorized by this act, to do any banking business of any kind, mercantile business of any kind, commission business of any kind, brokerage of any kind, stock jobbing of any kind, or the business of factors in any form, or the business of exchange in any form." Bullard's Dig., 615.

By the act of incorporation (30) the business and opperations of the company were to be "the towing of vessels by steam power in and out to sea, and up and down the river Mississippi, and the transporting passengers in like manner; also, wrecking and lightening vessels in said river, or at sea, or both; carrying passengers and freight in any part of the Gulf of Mexico, and elsewhere at sea."

The appellant contended in the Court below, that by this paragraph of the act of incorporation the appellees had formed a commercial partnership, which made them liable personally and jointly and severally for all its debts He bases this claim upon Art. 2796 of the Civil Code of Louisiana, which says that:

> "Commercial partnerships are such as are formed for carrying personal property for hire, in ships or other vessels."

Conceding to the appellant the intention expressed in the act of incorporation, of carrying passengers and freight, was that the *mercantile* business which corporators under the act of March 13, 1837, were prohibited from doing?

It is, however, obvious that the real business for which the company was formed, was the towing of vessels, and that the occasional conveyance of a passenger was an unimportant incident in the business. It is not the conveyance of passengers, but that of *personal* property which gives to a partnership a commercial character if it was formed for this purpose. There is not the least evidence in the Record that the Diana ever carried a pound of freight. A towboat which takes a tow in New Orleans to go to the mouth of the Mississippi, or tows a ship across the bar and up the river, cannot conveniently land either freight or passengers on her way, and is therefore very certain not to take them, except in the extreme cases mentioned by the witness Hopper (138), when they take passengers aground on the bar, and when they take cargoes from ships in distress. The witness, Coolidge, says, (p. 136): "I am confident that the towboats never carried freight for the planters.

What is the meaning of "mercantile business" in 6th sec. of the Act of 1837? That same section prohibits partnerships formed under that act from doing banking business, commission business, brokerage business, stock jobbing, factorage, or exchange business. All this is commercial business, and "mercantile business" would not have been added to it if it had not been intended to convey a meaning different from such commercial acts This clause is obviously so understood in the popular sense of the term "mercantile," as prohibiting the buying and selling of merchandise.

Thus we find it in Worcester's Dictionary, under the head of "mercantile:"

"*Mercantile* and *commercial* are often used indiscriminately; but commercial is the more comprehensive term. *Mercantile* relates particularly to the actual transaction of business; *commercial* also comprehends the theory and practice of commerce. *Mercantile* house, business. *Commercial*, education, people, town or speculation.

This subject is fully illustrated in the elaborate opinion of the Circuit Court, (p. 136 of the Record,) and the authorities there quoted need not be repeated here.

But it is quite enough to say, that if the Diana occasionally carried a passenger from the bar of the river to the city, this did not make the partnership a commercial one, according to Art. 2796 of the Civil Code, and that there is not a title of evidence in the Record that the Diana ever carried a pound of freight which would have been a commercial act under Art 2796.

The Circuit Court therefore correctly decided the case against the appellant, under the double aspect here presented.

Respectfully submitted.

LOUIS JANIN,
Of Counsel for Appellees.